
# FEDERAL REGISTER

Vol. 78 Friday,

No. 41 March 1, 2013

Pages 13771–13998

OFFICE OF THE FEDERAL REGISTER

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, March 12, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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# Rules and Regulations

Federal Register
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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 7

**RIN 0560–AG90**

## Selection and Functions of Farm Service Agency State and County Committees

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farm Service Agency (FSA) is adopting, without change, an interim rule that amended the regulations governing the selection and functions of State and county committees. The amendments in the interim rule were needed to make the regulations consistent with the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) and the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The intent of the amendments was to ensure that socially disadvantaged (SDA) farmers and ranchers are appropriately represented on county committees, to make the county committee election process more open and accountable, and to clarify requirements for committee membership in the situation where existing county committees are consolidated or combined. All of these amendments have already been implemented by FSA, except for the new provisions specifying that the Secretary may appoint a voting member to the county committee when required to ensure fair representation of SDA farmers and ranchers. Those appointments will be made starting in 2013. There will be no change in State and county committee functions and election procedures as a result of this rule.

**DATES:** Effective March 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Barbara Boyd; telephone: (202) 720–7890, email: *Barbara.Boyd@wdc.usda.gov. mailto:*. Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 10708 of the 2002 Farm Bill (Pub. L. 107–171) mandates several changes in the election process for FSA county committees and in the functions of both State and county committees in conducting county committee elections. Section 1615 of the 2008 Farm Bill (Pub. L. 110–246) makes minor additional changes. The interim rule was published in the **Federal Register** on June 5, 2012 (77 FR 33063–33075), following a proposed rule published on November 28, 2006 (71 FR 68755–68762). The rule was effective on September 4, 2012. The interim rule implemented the changes in the regulations required by both the 2002 and 2008 Farm Bills, and also made additional clarifying changes in response to comments on a previous proposed rule for the 2002 Farm Bill changes. The interim rule included provisions for the appointment of an SDA voting member to a county committee, which is authorized by the 2002 Farm Bill and will be implemented in 2013.

Consistent with the 2002 Farm Bill, the purpose of the amendments was to increase the transparency and accountability of county elections and to provide opportunities for the nondiscriminatory participation of SDA farmers and ranchers in county committees and in the programs of United States Department of Agriculture (USDA). The 2002 Farm Bill requires several actions by FSA to achieve those goals. The regulations specified in the interim rule are one of those actions; the other actions include collecting and reporting extensive data on the results of county committee elections and establishing Uniform Guidelines for conducting those elections. The 2008 Farm Bill requires additional changes to increase the maximum number of county committee members in the situation where counties are combined or consolidated into a single multi-county office, and to clarify that a farmer or rancher may serve only on the county committee for the county office where their farm records are administered.

In response to the interim rule, 10 comments were submitted. The responses to issues raised in the comments are discussed later in this document. The issues raised concerned SDA appointments and outreach. No changes are being made to the regulations as a result of comments, because most of the comments supported the rule and the few alternatives suggested by commenters exceed our legislative authority or are not legally viable. There were no comments on the provisions of the interim rule other than the SDA appointment process. Both supporting and opposing comments on the interim rule supported the need for FSA's outreach to SDA producers. Therefore, in the discussion of the comments, this rule provides additional information about our outreach efforts.

### Background on County Committees

County committees were originally authorized by Congress in the 1930s to allow for grassroots input and local administration of Agricultural Adjustment Administration programs. At that time, local farmers elected delegates to a county convention, which selected the members of the county committee. Direct election of county committee members has been FSA practice since FSA itself was authorized by the Federal Crop Insurance Reform and Department of Agriculture Reauthorization Act of 1994 (Pub. L. 103–334).

County committees provide local input on the administration of FSA programs, including commodity price support loans and payments, conservation programs, disaster payments, and emergency programs. Committee members are a critical component of the day-to-day operations of FSA. They help deliver and provide outreach for FSA Farm Programs at the local level. Farmers who serve on committees help decide the kind of programs their counties will offer. They provide input on how to improve program delivery. They work to make FSA agricultural programs serve the needs of local farmers and ranchers, and help local farmers and ranchers know

what programs are available. The duties of county committees currently include:

- Informing farmers of the purpose and provisions of FSA programs;
- Keeping the State FSA Committee informed of local administrative area (LAA) conditions;
- Monitoring changes in farm programs;
- Participating in monthly county meetings;
- Directing outreach activities;
- Making recommendations to the State committee on existing programs;
- Conducting hearings and reviews as requested by the State committee; and
- Ensuring SDA farmers and ranchers are fairly represented.

County committee decisions are made by consensus. Committee members vote to achieve consensus on various items, for example, yield determination for the county, the county executive director (CED) ratings, and approving producer applications when required for various Farm Programs.

County committees do not oversee the administration of FSA direct or guaranteed farm operating loans or ownership loans. Those are administered by FSA federal employees.

There are currently more than 7,700 committee members serving on more than 2,100 committees nationwide. More than 219,000 ballots were cast in the 2011 county elections. Elected committee members serve for a 3-year term, and roughly one-third of seats are up for election each year. There are term limits, which enables beginning farmers and those who have not participated in the past have an opportunity to serve. The interim rule added provisions specifying that the Secretary may appoint an SDA voting member when there is no elected SDA member on a county committee and one is needed to ensure fair representation based on the demographics of the county. In the context of this rule, SDA groups are African Americans, American Indians, Alaska Natives, Hispanics, Asian Americans, Pacific Islanders and women. Appointed members will serve a 1-year term and also have term limits. The determination of the need for an appointed member will be performed after each annual election. The 2012 county committee elections are in December 2012. Therefore, the determination of need for appointed members based on the results of the election 2012 cycle will be made by January 2013. Appointed SDA members will start their 2013 term in March 2013.

County committees may also have appointed non-voting SDA advisors. The appointment of those advisors is one of the efforts USDA has made to address the concerns in the 2002 Farm Bill about fair representation of SDA farmers and ranchers on county committees. Non-voting SDA advisors are recommended by the local county committee, in consultation with local community groups and local Tribal organizations representing SDA farmers and ranchers, and appointed by the State committee. Advisors attend county committee meetings and ensure that SDA issues and viewpoints are understood and considered in FSA actions. Non-voting advisors do not have the authority to sign documents or vote on county committee actions.

As discussed in the next section, the interim rule updated the regulations to make them consistent with current practice, but did not change the role of county committees or county committee voting members from current practice, with the exception of the new SDA appointment authority that will be implemented in 2013.

**Amendments Implemented Through the Interim Rule**

The interim rule amended 7 CFR part 7, ''Selection and Functions of Farm Service Agency State and County Committees.'' It made substantive changes to the regulations that were needed to add requirements from the 2002 and 2008 Farm Bills. This section of the document briefly discusses those amendments that have already been implemented in the regulations. We did not receive any comments on the amendments.

The definitions for ''participate'' and ''cooperate'' were added to the regulations. These terms, which are specified in the 2002 Farm Bill, are used to clarify who is eligible to vote in county elections and be nominated to serve on county committees. Farmers and ranchers who ''participate,'' meaning they receive assistance, benefits, or services from USDA or indirectly through another federal government agency, may vote in county elections and be nominated as county committee members. Farmers and ranchers who provide information to the FSA county office about their farming operation, thus meeting the definition of ''cooperate'' in the rule, may also be eligible voters and nominees even if they do not directly receive benefits or services from USDA.

The regulations for the establishment of LAAs were revised to be consistent with current practice and with the 2002 and 2008 Farm Bills. The regulations specify at least 3 LAAs per county, with up to 11 LAAs for county committees that have jurisdiction over multiple counties. The maximum allowable number of LAAs per county committee was increased in some cases. The purpose of having more LAAs is, in part, to ensure that SDA representation is not reduced when county offices are combined. In some circumstances, such as a very large county or one with many farms, a county committee with jurisdiction over a single county can have up to five LAAs.

The specific requirements on election procedures were added to the regulations, including specific requirements to give the public advance notice at least 30 days before the election on how, where, and when eligible voters may vote. FSA holds all the county elections at the same time every year, with ballots available in November and counted in December. The elections are widely publicized at the county, State, Tribal, and national levels. As specified in the regulations, the public may observe the opening and counting of the ballots, and the county committee must provide at least 10 days advance notice of the date, time, and place at which the ballots will be opened and counted.

Occasionally, a vacancy on the county committee occurs outside of the normal election cycle, such as when a member resigns or moves away. The procedures for how a vacancy may be filled by a special election or a designated alternate were clarified in the regulations. While the option to have the State committee designate an alternate is specified in the regulations so that FSA can exercise that option if needed, special elections are normally held to fill vacancies.

The challenges and appeals requirements regarding the voter eligibility or results of a county committee election in the regulations includes specific requirements to allow nominees to challenge the results of elections within required times and to allow a special election if the election is nullified.

The 2002 Farm Bill requires FSA to collect and report detailed information on county election results. Therefore, the regulations include requirements for FSA county committees to collect this information and provide it to the FSA national office. This information is already being collected and reported. FSA publishes this information annually, and it is available on our Web site at *www.fsa.usda.gov/elections.* Election results for 2002 through 2011 are currently posted.

The political activity restrictions and personnel actions procedures in the regulations are consistent with the specific procedures in FSA handbooks and directives that are already in use. Since the details are in the handbooks

and directives, the provisions now reference the appropriate handbooks and directives. Obsolete appeals provisions were removed from the regulations.

The interim rule also made a number of technical changes to remove other obsolete provisions, such as removing references to county conventions and community committees.

**Provisions To Appoint SDA Members to County Committees**

The 2002 Farm Bill grants the Secretary the authority to appoint a SDA committee member to a committee to achieve the goal of fair representation in a county committee jurisdiction. The 2008 Farm Bill requires the Secretary to develop procedures to maintain SDA representation on county committees. The interim rule specified that the Secretary may appoint one additional SDA voting member to a county committee when a significant population of SDA farmers and ranchers exist in the committee jurisdiction and no member is elected from that socially disadvantaged population.

As discussed in the preamble to the interim rule, the Secretary will use the authority to appoint SDA committee members when the statistical evidence, measured at the county level, demonstrates a lack of diversity and underrepresentation on selected county committees over a period of at least 4 years. The appointed SDA committee member will be in addition to the elected voting members. The appointed member does not replace any of the elected members. Where the county already has an SDA advisor, the Secretary may appoint that advisor as the SDA voting member.

FSA's analysis of 2010 and 2011 election results showed that of the approximately 2,100 county committees, about 13 percent met the threshold where SDA representation would be expected based on the demographics of the eligible county committee voters in the county. Of these counties where SDA representation would be expected, over half already had an elected SDA voting member. Almost all of the counties where SDA representation would be expected already had a non-voting SDA advisor. Fewer than 20 counties that met the benchmark for expected SDA representation had neither an elected SDA voting member nor an SDA advisor.

The Secretary will also consider observed historical voting patterns in determining when an SDA appointment is needed. FSA has collected detailed election data for the past decade of county committee elections, as required by the 2002 Farm Bill. Voting patterns are relevant because individual voting members may resign or reach term limits, resulting in a temporary lack of SDA representation. Only counties that have an observed pattern of non-representation for at least the past four election cycles will be considered for SDA appointments. Analysis of 2007 through 2010 election data found that about 5 percent of counties (over 100) would be in this group. Counties that meet the benchmark for lacking SDA representation and do not currently have an SDA voting member, but have had one in at least one of the last four election cycles, will not be considered for appointments. Where counties do not currently have an SDA voting member, meet the benchmark for lacking SDA representation for at least four election cycles, and have an advisor, the Secretary may select the existing advisor as the appointed SDA voting member. The vast majority of the appointments (roughly 80 percent) are expected to be elevation to voting status of persons who are already serving on their local county committee as a non-voting SDA advisor. In the few counties with no SDA advisor, the selection of an appointed member will follow the same procedure used to identify an SDA advisor, including, among other things, outreach to community based organizations.

FSA will continue outreach efforts to increase SDA voter participation and SDA representation on county committees through the regular election process. We will also continue to update the statistical analysis each year with current year election data. Going forward, the appointment process will be used where and when it is needed to ensure fair representation of SDA farmers and ranchers. If in any year the statistical analysis finds that SDA farmers and ranchers are fairly represented on all county committees, then the Secretary will not need to make any SDA appointments that year.

**Discussion of Comments on Interim Rule**

FSA received ten comments on the interim rule. The comments were received from producers, organizations representing producers, and organizations representing county committee members and FSA county office employees. The commenters generally supported the interim rule, and the goals of making the election processes more transparent and ensuring fair SDA representation. Three commenters did not support the SDA appointments. Some generally supportive comments suggested alternatives to the SDA appointment process as specified in the interim rule. Nine of the 10 comments addressed the new procedures for appointing SDA members; the 10th addressed the need for more outreach to SDA stakeholders, which was also an issue of concern for many of the other commenters. We did not receive comments on any other provision of the interim rule.

*Comment:* The SDA appointment process would inject politics into the county committee system. It would be a huge problem for the Secretary of Agriculture to appoint numerous qualified SDA committee members every year.

*Response:* Based on our past experience with appointing non-voting SDA advisors, we do not envision major problems finding qualified SDA farmers and ranchers who meet the eligibility requirements for county committee membership as specified in the interim rule. The eligibility requirements for appointed and elected members are identical.

*Comment:* The current election process has local accountability and should be maintained.

*Response:* The current election process will be maintained. In addition, the SDA appointed members will be selected from the local community and must meet the same eligibility requirements as elected members.

*Comment:* The SDA appointments will create a disconnection rather than a connection to the community. The election process serves the community better.

*Response:* The SDA appointments do not replace any elected members. The SDA appointed members will be selected from the local community. The appointments are needed to ensure that the county committee membership represents the community. In most cases, the election process has resulted in county committee membership that fairly represents the community in that area. FSA outreach has resulted in increased SDA representation on county committees. However, our analysis of election results indicates that in a few county committee jurisdictions, fair representation of the community has not been achieved through the election process. If in the future the election results in every county demonstrate fair representation of the local community based on the demographics of that community, no appointments will be needed.

*Comment:* The new rule is unnecessary because the policies and procedures already in place accomplish the stated objective of fair and balanced

representation. Appointments are undemocratic.

*Response:* While the increased FSA outreach activities over the last several years have resulted in the election process reflecting fair representation in most locations, our analysis of election results indicates that in a few county committee jurisdictions, fair representation has not been achieved through the existing election process. If in the future the election results in every county demonstrate fair representation based on the demographics of that county, no appointments will be needed.

*Comment:* If there is an existing SDA advisor, will the SDA appointed member be in addition to that person, or will the advisor become the appointed member?

*Response:* Where an SDA appointment is needed, the Secretary will consider any existing SDA advisor for that position, in which case the advisor would likely be appointed as the SDA member. However, the Advisor is a separate position from the SDA appointed member and it is possible that both positions could potentially be filled by two separate people in the same county if there is a need to represent multiple SDA groups for fair representation. In that situation where multiple SDA groups lack fair representation on the county committee, there could be both a voting SDA appointed member and a non-voting Advisor in the same county.

*Comment:* Encouraging SDA representation through appointments is just and fair, but the SDA category should include small farmers.

*Response:* The SDA groups for this regulation are defined in the 2002 Farm Bill; we do not have the authority to add groups to the definition. However, FSA does recognize the needed for outreach and program education with small farmers and includes reaching that group in their outreach plans. Additional information on existing FSA Farm Programs is also available on the FSA Web site at: *http://www.fsa.usda.gov.* Information on FSA Education and Outreach as well as contact information is available at: *http://www.fsa.usda.gov/outreach.* Information on assistance available to SDA farmers is available at: *http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=sao-oa-cr-ma.*

*Comment:* Instead of appointments, have SDA-only elections to elect a county level at-large member. The 2002 Farm Bill provides the Secretary with the authority to establish at-large minority LAAs and to accept nominations from SDAs for those designated at-large seats.

*Response:* The 2002 Farm Bill does not provide USDA the authority to conduct separate elections where only SDA members may be nominated, or to create at-large minority LAAs. The procedures for appointing SDA members in the regulations are narrowly tailored to promote diversity and inclusion on county committees, consistent with the legislative authority provided in the 2002 and 2008 Farm Bills.

*Comment:* Use the LAA demographics instead of the county demographics to decide if an appointment is needed. Using county level data may dilute the apparent need for an SDA representative.

*Response:* The county committee serves the county as a whole, and we have legislative authority for one and only one appointed SDA member per county. Therefore, it is appropriate to use county level demographic data to determine if an SDA appointment is needed, and to select that member from any LAA in the county.

*Comment:* LAA boundaries should be reviewed in consultation with community and SDA groups.

*Response:* SDA population is one of the factors used in determining LAA boundaries.

*Comment:* Appoint SDA members to a 3 year term instead of a 1 year term. One year is not enough time to develop relationships with the farming community or to be effective in understanding FSA programs and their delivery.

*Response:* The SDA member term was established as 1 year because the county committee elections are held every year. If an SDA member is elected, there is no need for an additional SDA appointed member to achieve fair representation. The goal is to increase the SDA population through the election process whenever possible. If the need for an appointed member continues beyond 1 year, the appointed SDA member can be selected for up to 9 consecutive years as an appointed member. Also, a formerly appointed member may at any time run for election as an elected member, subject to the 9 consecutive years limit. The ability to serve for 9 consecutive years provides the opportunity to build community relationships and knowledge base over time.

*Comment:* Release voter lists to candidates and community organizations. Some local county FSA offices will not provide that information. The list of voters should include the race, gender, and ethnicity of voters, under conditions consistent with the Privacy Act.

*Response:* FSA collects and publishes general information about voter demographics in each LAA. The Privacy Act requires that agencies publish a System of Records notice in the **Federal Register** with a period for public comment before personal information is collected to inform the public on how the collected information will be used. Personally identifiable information may be released for certain routine uses, which must be specified in the System of Records notice. As provided in the current regulations and in the applicable System of Records notice, releasing the list of eligible voter names and addresses to candidates for county committee is listed as a ''routine use'' of that information in the System of Records notice that covers the collection of that information. Only names and addresses are provided to candidates; other information such as race, ethnicity, and gender, etc., is not released to candidates. Releasing personally identifiable information on race, ethnicity, and gender of individual voters to candidates for county committee elections is not an authorized routine use in the applicable System of Records (Farm Records File (Automated) USDA/FSA–2) that covers the collection of FSA program participant information. Releasing that information is longstanding FSA policy and did not change with the interim rule. In addition, lists of voter names without addresses will be provided to any member of the public, including community organizations, on request. If there is an issue with a particular FSA county office not providing that information, please contact the applicable State Office. Contact information for State Offices can be found at *http://www.fsa.usda.gov/FSA/stateOffices.*

*Comment:* Implement Section 14006 of the 2008 Farm Bill, and release the data on program participation data to the public.

*Response:* National Agricultural Statistics Service (NASS) 2007 Census of Agriculture data, which includes data on producer demographics at the national, State, and county levels, is currently available on the web at *www.agcensus.usda.gov.* USDA has also implemented new forms and a Departmental Regulation to implement Section 14006, and has directed agencies to collect the required data on race, ethnicity, and gender of program applicants and participants. That data is expected to be available to the public on the USDA Web site in 2013.

*Comment:* The FSA local offices need to do more on SDA outreach, not just about the county committee process, but about all of its programs. They need to invest more in partnerships with community based organizations to improve outreach and training. Also, the county committees need to do more on providing information to local SDA farmers and ranchers. Elections should be more widely publicized, and FSA should do more to improve SDA participation in elections. More emphasis should be placed on outreach to all farmers, not just SDA farmers, at the local level, to foster the next generation of farmers. FSA should be required to work with community based organizations on evaluations and required improvements in election participation and participation in FSA programs.

*Response:* The Farm Service Agency is committed to improving outreach to farmers and ranchers and will continue to provide guidance and tools to assist local offices in conducting and improving outreach at the local levels within the resources available. Local farmers and ranchers are also encouraged to become involved and learn more about the county committee by attending county committee regular meetings. Times and place of county committee meetings can be obtained from the local FSA county office and the public is welcomed at the meetings.

FSA is committed to carrying out an effective outreach program to improve program participation processes and overcome barriers commonly faced by farmers and ranchers. Those barriers include access to credit and lack of information on available FSA programs. Part of that commitment includes ensuring:

- Resources such as funding, manpower, and training materials are provided to States and counties we serve;
- Partnerships with members of the underserved and minority groups, community based organizations, community leaders, congressional leaders, educational institutions, and other federal agencies are required and supported; and
- Fair representation in FSA county committee nominations and elections is achieved.

FSA conducts an extensive outreach program and relies on partnerships to assist in efforts to improve accessibility to our programs and services. FSA has made outreach an integral part of the overall delivery of programs and services to customers and potential beneficiaries. The purpose of the outreach is to ensure that the county committee election process, and all FSA programs and services, are equally available to all customers.

With hundreds of national partners and thousands of state and county partners, these outreach efforts to enhance the county committee election process have improved participation and awareness significantly over the years. Through outreach informational meetings, the mailing of election material packets, slide presentations, public service announcements, newsletters, press releases, posters, fact sheets, and success stories, the public have become more aware of the county committee structure, eligibility requirements, and nomination processes. More information on the county committee election process and election results are available in English and Spanish at: *http://www.fsa.usda.gov/elections.*

Last year, FSA outreach coordinators conducted over 7,000 outreach activities that reached over 4 million people nationwide. FSA does evaluate the effectiveness of outreach in improving election and program participation. In the past few years through extensive outreach efforts:

- Participation of beginning and minority farmers in FSA programs has increased;
- Farm loan assistance to immigrant farmers has increased; and
- SDA participation in county committee nominations and elections have increased.

In addition to the county office outreach meetings, participation in other partner events and activities helps to ensure we are reaching all of our customers and potential customers. We participate in local and national conferences, festivals, State and county fairs, farm expos, and grower and producer workshops. We conduct special group meetings to discuss disaster assistance programs and county committee elections. Through the USDA Strike Force Initiative, FSA works in partnership with community based organizations and other USDA agencies to improve outreach and provide assistance to persistent poverty communities and farmers. FSA also participates in farm tours and Ag Field Days.

Through extensive outreach, planning, promotion, and partnerships, FSA has shown a strong commitment to promote fair representation and the increase participation of eligible farmers and ranchers in all FSA programs. See *www.fsa.usda.gov/outreach* for more information.

**Executive Order 12866 and 13563**

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this final rule.

**Regulatory Flexibility**

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Therefore, FSA has not prepared a regulatory flexibility analysis.

There are no costs to comply with this rule because the regulatory changes were implemented through the previous interim rule. There are no costs of compliance with this rule for the public, and the costs for the previous interim rule are expected to be minimal. No comments were received on the proposed rule or interim rule regarding the economic impact on small entities. Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

**Environmental Review**

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part

799). The rule was determined to be Categorically Excluded. Therefore, no environmental assessment or environmental impact statement will be completed for this final rule.

**Executive Order 12372**

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State, and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State, and local processes for State, and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This rule is not retroactive and it does not preempt State, or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

**Executive Order 13132**

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State, and local governments. Therefore, consultation with the States is not required.

**Executive Order 13175**

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law.

FSA has been working closely with the USDA Office of Tribal Relations to ensure that the rule meets the concerns of Tribal leaders and to develop a plan to improve the rule implementation with FSA staff. USDA will also respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to implement this rule in Indian country. We received one comment on the interim rule, from a group representing Tribal farmers and ranchers. That comment is addressed above and noted that the local county committee and local FSA office should improve outreach efforts to Tribal members.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Paperwork Reduction Act**

Currently approved information collection activities are covered under OMB control number 0560–0229. This rule involves no change to the currently approved collection of information.

**E-Government Act Compliance**

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects for 7 CFR Part 7**

Agriculture.

## PART 7—SELECTION AND FUNCTIONS OF FARM SERVICE AGENCY STATE AND COUNTY COMMITTEES

■ Accordingly, we are adopting as final, without change, the interim rule that amended 7 CFR part 7 and that was published at 77 FR 33063–33075 on June 5, 2012.

Signed on December 4, 2012.

**Thomas J. Vilsack,**

*Secretary of Agriculture.*

[FR Doc. 2013–04790 Filed 2–28–13; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 205

**[Document Number AMS–NOP–11–0002; NOP–11–02]**

## National Organic Program: Notice of Policies Addressing Kelp, Seeds and Planting Stock, Livestock Feed, and Responding to Pesticide Residue Testing

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of availability of final guidance.

**SUMMARY:** The National Organic Program (NOP) is announcing the availability of three final guidance documents and one instruction document intended for use by certifying agents and certified operations. The final guidance and instruction documents are entitled as follows: ''The Use of Kelp in Organic Livestock Feed (NOP 5027)*;* Responding to Results from Pesticide Residue Testing (NOP 2613)''; ''Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production (NOP 5029)''; and ''Evaluating Allowed Ingredients and Sources of Vitamins and Minerals for Organic Livestock Feed (NOP 5030)''. These final guidance and instruction documents are intended to inform the public of NOP's current thinking on these topics.

**DATES:** The final guidance documents announced by this notice of availability are effective on March 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** Melissa Bailey, Ph.D., Director, Standards Division, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250, Email: *Melissa.bailey@ams.usda.gov;* Telephone: (202) 720–3252; Fax: (202) 205–7808.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On June 13, 2011, the National Organic Program (NOP) published in the **Federal Register** a notice of availability with request for public comment on four draft guidance documents (76 FR 34180). The topics covered in the draft documents addressed recommendations issued by the National Organic Standards Board (NOSB) and the USDA Office of Inspector General (OIG) in a March 2010 audit report of the NOP. The four documents presented policies on the use of kelp in livestock feed products, procedures for certifying agents in response to results from pesticide residue testing, requirements for procurement and use of seed, seedlings and planting stock, and evaluation criteria for allowed ingredients and sources of vitamins and minerals in livestock feed. The four draft guidances can be viewed on the NOP Web site at *http://www.ams.usda.gov/NopDraftGuidance.* The 60-day comment period closed on August 12, 2011.

The NOP received approximately 50 individual comments on the four draft guidance documents. Based upon the comments received, the NOP revised and is publishing the three draft guidance documents as final: ''NOP 5027—The Use of Kelp in Organic Livestock Feed*;* ''NOP 5029—Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production''; and ''NOP 5030—Evaluating Allowed Ingredients and Sources of Vitamins and Minerals for Organic Livestock Feed''. Each guidance document includes an appendix where the NOP provides a complete discussion of the comments received and the rationale behind any changes made to the guidance documents as well as any changes proposed, but not made to the guidance documents.

The fourth draft guidance document, ''NOP 5028—Responding to Results from Pesticide Residue Testing,'' has been revised and reissued under the same title as an instruction document, NOP 2613. Instruction documents set forth or clarify existing NOP procedures and provide information to certifying agents about conducting business related to certification and enforcement. In contrast, guidance documents provide or explain options and alternatives to satisfy regulatory requirements, set forth changes in interpretation of policy, or address unusually complex or highly controversial issues. Upon consideration of the objectives of the content in the final document, the NOP has issued NOP 2613 as an instruction document, rather than guidance, since the purpose is to explain to certifying agents how to respond to results from pesticide residue testing. Because this was issued as a draft guidance with request for comment, this instruction includes an appendix where the NOP provides a discussion of the comments received on the draft guidance and the rationale behind any changes made in the instruction as well as any changes proposed, but not made to the instruction.

The three final guidance documents and one instruction document are now available from the NOP through ''The Program Handbook: Guidance and Instructions for Certifying Agents and Certified Operations''. This Handbook provides those who own, manage, or certify organic operations with guidance and instructions that can assist them in complying with the NOP regulations. The current edition of the Program Handbook is available online at *http://www.ams.usda.gov/NopProgramHandbook.*

## II. Significance of Guidance

These final guidance documents are being issued in accordance with the Office of Management and Budget (OMB) Bulletin on Agency Good Guidance Practices (GGPs) (January 25, 2007, 72 FR 3432–3440). The purpose of GGPs is to ensure that program guidance documents are developed with adequate public participation, are readily available to the public, and are not applied as binding requirements. Final guidance represents the NOP's current thinking on these topics. It does not create or confer any rights for, or on, any person and does not operate to bind the NOP or the public. Guidance documents are intended to provide a uniform method for operations to comply that can reduce the burden of developing their own methods and simplify audits and inspections. Alternative approaches that can demonstrate compliance with the Organic Foods Production Act (OFPA), as amended (7 U.S.C. 6501–6522), and its implementing regulations are also acceptable. As with any alternative compliance approach, the NOP strongly encourages industry to discuss alternative approaches with the NOP before implementing them to avoid unnecessary or wasteful expenditures of resources and to ensure the proposed alternative approach complies with the Act and its implementing regulations.

## III. Electronic Access

Persons with access to Internet may obtain the final guidance at the NOP's Web site at *http://www.ams.usda.gov/nop.* Requests for hard copies of the guidance or instruction documents can be obtained by submitting a written request to the person listed in the **ADDRESSES** section of this Notice.

**Authority:** 7 U.S.C. 6501–6522.

Dated: February 26, 2013.

**David R. Shipman,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2013–04823 Filed 2–28–13; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 905

**[Doc. No. AMS–FV–11–0076; FV11–905–1 FR]**

# Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Redistricting and Reapportionment of Grower Members, and Changing the Qualifications for Grower Membership on the Citrus Administrative Committee

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule redefines districts, reapportions representation, and modifies the qualifications for membership on the Citrus Administrative Committee (Committee). The Committee is responsible for local administration of the Federal marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida (order). This final rule reduces the number of districts, reapportions representation among the districts, and allows up to four growers who are shippers or employees of a shipper to serve as grower members on the Committee. These changes adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for more growers to serve on the Committee.

**DATES:** Effective March 4, 2013.

**FOR FURTHER INFORMATION CONTACT:** Corey E. Elliott, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Corey.Elliott@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this

regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202)720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule redefines districts, reapportions representation, and modifies the qualifications for membership on the Committee. This rule reduces the number of districts, reapportions grower representation among the districts, and allows up to four growers who are shippers or employees of a shipper to serve as grower members on the Committee. These changes adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for more growers to serve on the Committee. These changes were unanimously recommended by the Committee at a meeting on July 14, 2011.

Section 905.14 of the order provides the authority to redefine the districts into which the production area is divided and to reapportion or otherwise change the grower membership of the districts to assure equitable grower representation on the Committee. This section also provides that such changes are to be based, so far as practicable, on the averages for the immediately preceding five fiscal periods of: (1) The volume of fruit shipped from each district; (2) the volume of fruit produced in each district; and, (3) the total number of acres of citrus in each district. It also requires that the Committee consider such redistricting and reapportionment during the 1980–81 fiscal period and only in each fifth fiscal period thereafter. The recommendation of July 14, 2011, is consistent with the time requirements of this section.

Section 905.19 provides for the establishment of and membership on the Committee, including the number of grower and handler members and their corresponding qualifications to serve. In addition, this section provides the authority for the Committee, with the approval of the Secretary, to establish alternative qualifications for grower members. The qualifications in this section specify that grower members cannot be shippers or employees of shippers.

Prior to this change, § 905.114 of the order's administrative rules and regulations listed and defined four grower districts within the production area. District One included the counties of Hillsborough, Pinellas, Pasco, Hernando, Citrus, Sumter, Lake, Orange, Seminole, Alachua, Putnam, St. Johns, Flagler, Marion, Levy, Duval, Nassau, Baker, Union, Bradford, Columbia, Clay, Gilchrist, and Suwannee and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. District Two included the counties of Polk and Osceola. District Three included the counties of Manatee, Sarasota, Hardee, Highlands, Okeechobee, Glades, De Soto, Charlotte, Lee, Hendry, Collier, Monroe, Dade, Broward, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. District Four included St. Lucie County and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County.

Section 905.114 also specifies the grower representation on the Committee from each district. Previously, District One was represented by one grower member and alternate; District Two was represented by two grower members and alternates; Districts Three and Four were represented by three grower members and alternates.

Since the last redistricting and reapportionment in 1991, total citrus acreage has fallen by 24 percent, production has fallen by 23 percent, and fresh shipments have fallen by 60 percent. Citrus production and growing acreage have gradually shifted from the north and central parts of the state to the eastern and southwestern growing regions following damaging freezes. The industry has also seen an overall decrease in acreage and production due to real estate development and the impact of several hurricanes. Increased production costs associated with replanting, cultivating, and battling citrus diseases, such as canker and greening, have also contributed to changes in production.

Considering the numerous changes to the industry, the Committee discussed the need to redistrict the production area and reapportion grower membership at its meeting on July 14, 2011. During the discussion, Committee members agreed that industry conditions have been stabilizing, making this an appropriate time to consider redistricting and reapportionment. Trees planted to replace acreage lost to disease and hurricane damage are now producing, new production practices are helping to mitigate the effects of disease, and a weakened housing market has reduced development. These factors have all contributed to greater stability within the industry.

In considering redistricting and reapportionment, the Committee reviewed the information and recommendations provided by the subcommittee tasked with examining this issue. The subcommittee reviewed the numbers for acreage, production, and shipments from all counties in the production area as required in the order. While this information was beneficial in showing how the industry had changed since the last time the production area was redistricted, there were concerns about how representative these numbers were of the fresh citrus industry.

The majority of Florida citrus production goes to processing for juice, and the available numbers for acreage and production by county do not delineate between fresh and juice production, making it difficult to determine if those numbers reflect fresh production. Further, reviewing the available data for fresh shipments also presented problems in that the numbers

were more reflective of handler activity rather than grower activity, as fruit from many counties is handled in counties other than where the fruit is grown, and often in separate districts from where the fruit is grown.

In an effort to provide numbers reflective of grower production utilized for fresh shipments, the subcommittee used the available information on trees by variety in each county combined with the percentage of fresh production by variety to calculate a fresh production estimate for each county. Currently, 3 percent of orange, 44 percent of grapefruit, and 58 percent of specialty citrus production are shipped to the fresh market. Using these estimates, District One currently accounts for 9 percent of fresh production; District Two, 13 percent; District Three, 31 percent; and District Four, 47 percent of fresh production.

Based on the fresh production estimates and other information available, the subcommittee recommended reducing the number of districts from four to three by combining current Districts One and Two into a new District One. Current District Three becomes District Two, and District Four becomes District Three. The subcommittee also recommended that the nine grower members be reapportioned as follows based on the estimates for fresh production: Two grower members and alternates for District One, three grower members and alternates for District Two, and four grower members and alternates for District Three.

With nine growers serving on the Committee, each member represents approximately 11 percent of fresh production. Under the subcommittee recommendation, District One, with 22 percent of the fresh production, is represented by 22 percent of the grower members and alternates on the Committee, with two grower members and alternates. District Two, with 31 percent of fresh production, is represented by 33 percent of the grower members and alternates on the Committee, with three grower members and alternates. District Three, with 47 percent of fresh production, is represented by 44 percent of the grower members and alternates on the Committee, with four grower members and alternates.

In discussing the recommendations of the subcommittee, Committee members found that the estimated fresh production numbers were a good indicator of fresh production and were beneficial when considering how the production area should be redistricted and grower membership distributed. Based on the new districts and the estimated fresh production, the Committee agreed that the subcommittee's recommendations evenly allocated grower membership. Consequently, the Committee voted unanimously in support of the changes.

Accordingly, District One includes the counties of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Duval, Flagler, Gilchrist, Hernando, Hillsborough, Lake, Levy, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, Sumter, Suwannee, and Union and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. District One is represented by two grower members and alternates.

District Two includes the counties of Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Monroe, Okeechobee, Sarasota, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. District Two is represented by three grower members and alternates.

District Three includes the County of St. Lucie and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district has four grower members and alternates.

In addition to discussing redistricting and reapportionment of grower representation on the Committee, the Committee also considered changes to the grower membership qualifications established under the order. When the qualifications for grower membership were established, the line between growers and shippers was clearer, with more growers in the business of just producing fresh fruit for the fresh market and not involved in the shipping aspect of the industry. However, over the years, the industry has seen more growers partnering to form shipping interests or vertically integrating with shippers.

This trend began in the 1990s, when the industry was in an oversupply situation, and growers were looking for ways to assure their fruit was purchased. This consolidation between growers and shippers continued as the industry adjusted to changes in production and reacted to the pressures of disease, rising land values, hurricanes and freezes. Also, the same pressures that have encouraged consolidation and vertical integration have prompted many growers to leave the industry, further reducing the number of growers solely engaged in production.

Prior to this change, a grower who was affiliated with or was an employee of a shipper did not qualify to serve as a grower member on the Committee. In discussing this issue, the Committee recognized the changes in the makeup of the industry, and the need to revise the qualifications for grower membership to reflect these changes. Committee members agreed that with growers who are affiliated with shippers playing an increasing role in the industry, a change should be made to facilitate their participation on the Committee. Several Committee members stated that they thought such a change was important, but that the majority of grower seats on the Committee should be maintained for pure growers, those not affiliated with a shipper.

To create an opportunity for shipper-affiliated growers to serve on the Committee, while maintaining the majority of positions for pure growers, it was determined that the grower qualifications for membership on the Committee be modified so that up to four grower members may be growers affiliated with or employed by shippers, with the remaining five seats open only to pure growers who are not affiliated with or employed by shippers. Committee members supported this change because it does not mandate that the four positions be filled by growers affiliated with shippers, but does create the opportunity for these types of growers to serve on the Committee. This change provides the flexibility to expand grower membership to include growers who are affiliated with shippers without limiting the opportunity for pure growers to serve.

The Committee believes this change makes the Committee more reflective of the fresh segment of the Florida citrus industry. Providing the opportunity for growers affiliated with shippers to serve on the Committee helps bring additional perspectives and ideas to the Committee, allows another segment of growers to serve on the Committee, and creates an increased opportunity for participation by small citrus operations. Further, retaining five of the nine grower seats as seats for only pure growers helps maintain a balance between grower and shipper representation on the Committee.

With growers who are affiliated with the shipping segment of the industry playing an increasing role in the industry and the expectation that this segment of growers will continue to increase, the Committee believes facilitating their inclusion on the Committee will better reflect the current

industry structure. Widening the pool of growers from which members are nominated also creates additional opportunities for growers with different backgrounds and perspectives to serve on the Committee. Therefore, the Committee unanimously recommended revising grower member qualifications to allow up to four growers who are affiliated with or employed by shippers to serve as grower members on the Committee.

The next round of grower nominations will be held in May 2013. In order to give the industry ample notice of these changes, and because Section 905.14 requires that this announcement occur on or before March 1 of the then current fiscal year, the modifications need to be in effect prior to March 1, 2013, to be utilized in the May 2013 elections.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 55 handlers of Florida citrus who are subject to regulation under the marketing order and approximately 8,000 producers of oranges, grapefruit, tangerines, and tangelos in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida citrus during the 2010–11 season was approximately $12.16 per 4/5 bushel carton, and total fresh shipments were approximately 30.4 million cartons. Using the average f.o.b. price and shipment data, and assuming a normal distribution, at least 55 percent of the Florida citrus handlers could be considered small businesses under SBA's definition. In addition, based on production and producer prices reported by the National Agricultural Statistics Service and the total number of Florida citrus producers, the average annual producer revenue is less than $750,000. Therefore, the majority of handlers and producers of Florida citrus may be classified as small entities.

This final rule reduces the number of districts from four to three, reapportions grower representation among the districts, and allows up to four growers who are shippers or employees of shippers to serve as grower members on the Committee. These changes adjust grower representation to reflect the composition of the industry, provide equitable representation from each district, and create the opportunity for more growers to serve on the Committee. This rule revises § 905.114 of the regulations regarding grower districts and the allotment of members amongst those districts, and adds a new paragraph to § 905.120 of the rules and regulations to revise grower membership qualifications. The authority for these actions is provided in §§ 905.14 and 905.19 of the order, respectively. These changes were unanimously recommended by the Committee at a meeting on July 14, 2011.

It is not anticipated that this action will impose any additional costs on the industry. This action will have a beneficial impact as it more accurately aligns grower districts and reapportions grower membership in accordance with the production of fresh Florida citrus. This action also creates an opportunity for growers that are affiliated with or employees of shippers to serve on the Committee as grower members. These changes should provide equitable representation to growers on the Committee and increase diversity by allowing more growers the opportunity to serve. These changes are intended to make the Committee more representative of the current industry. The effects of this rule will not be disproportionately greater or less for small entities than for larger entities.

The Committee discussed alternatives to these changes including making no changes to the districts or the apportionment of grower membership. The Committee recognized that there had been some significant changes to the industry since the last time the production area was redistricted and members reapportioned in 1991. The Committee determined that some changes were needed to make the districts and the apportionment of members reflective of the current industry structure. In discussing alternatives to changing grower member qualifications, the Committee explored making no changes to the qualifications or setting more restrictive limits on the alternate qualifications for growers affiliated with shippers. However, the Committee agreed that changes to the structure of the industry, including increasing vertical integration, support making a change to grower membership qualifications. Further, the Committee believes allowing up to four growers affiliated with or employed by shippers to serve on the Committee creates an opportunity for these growers, but maintain a majority of seats for pure growers who are not affiliated with shippers. Therefore, for the reasons above, these alternatives were rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule requires textual changes to the form FV–163, Confidential Background Statement. However, the changes are purely cosmetic and do not affect the burden. In light of the redistricting, District Four is removed as a check-off option. A statement on the form is also reworded to accommodate the revision in grower member qualifications. With this change, the OMB currently approved total burden for completing FV–163 remains the same. A Justification for Change for this change has been submitted to OMB for approval.

As noted in the initial regulatory flexibility analysis, this final rule will not impose any additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports, and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee

deliberations on all issues. Like all Committee meetings, the July 14, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on December 12, 2012 (77 FR 73961). Copies of the rule were mailed or sent via facsimile to all Committee members and Florida citrus handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 11, 2013, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because Committee nominations are scheduled to be held in the spring, and these changes need to be in effect in advance so that industry stakeholders are familiar with the new grower districts, reapportionment, and qualifications prior to the nomination process. Further, to be effective for the next nomination cycle, the order requires that the redistricting and reapportionment actions be announced on or before March 1, 2013. Also, a 30-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 905**

Grapefruit, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

## PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 905.114 is revised to read as follows:

**§ 905.114 Redistricting of citrus districts and reapportionment of grower members.**

Pursuant to § 905.14, the citrus districts and membership allotted each district shall be as follows:

(a) Citrus District One shall include the counties of Alachua, Baker, Bradford, Citrus, Clay, Columbia, Duval, Flagler, Gilchrist, Hernando, Hillsborough, Lake, Levy, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, Sumter, Suwannee, and Union and County Commissioner's Districts One, Two, and Three of Volusia County, and that part of the counties of Indian River and Brevard not included in Regulation Area II. This district shall have two grower members and alternates.

(b) Citrus District Two shall include the counties of Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee, Hendry, Highlands, Lee, Manatee, Monroe, Okeechobee, Sarasota, and that part of the counties of Palm Beach and Martin not included in Regulation Area II. This district shall have three grower members and alternates.

(c) Citrus District Three shall include the County of St. Lucie and that part of the counties of Brevard, Indian River, Martin, and Palm Beach described as lying within Regulation Area II, and County Commissioner's Districts Four and Five of Volusia County. This district shall have four grower members and alternates.

■ 3. In § 905.120, add paragraph (g) to read as follows:

**§ 905.120 Nomination procedure.**

* * * * *

(g) Up to four grower members may be growers who are also shippers, or growers who are also employees of shippers.

Dated: February 25, 2013.

**David R. Shipman,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2013–04787 Filed 2–28–13; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

### 29 CFR Part 2520

**RIN 1210–AB51**

## Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Final rules.

**SUMMARY:** This document contains final rules under Title I of the Employee Retirement Income Security Act (ERISA) that implement reporting requirements for multiple employer welfare arrangements (MEWAs) and certain other entities that offer or provide benefits that consist of medical care (within the meaning of section 733(a)(2) of ERISA and 29 CFR 2590.701–2) for employees of two or more employers. These final rules amend the existing Form M–1 reporting rules by incorporating new provisions enacted as part of the Patient Protection and Affordable Care Act (the ''Affordable Care Act''). They also amend existing Form 5500 annual reporting rules for ERISA-covered plans subject to Form M–1 reporting rules. Elsewhere in this edition of the **Federal Register**, the Employee Benefits Security Administration is publishing final rules related to the Secretary of Labor's new enforcement authority with respect to MEWAs, a notice adopting final revisions to the Form 5500 Annual Return/Report and its instructions to add new Form M–1 compliance questions, as well as an additional notice announcing the finalized revisions to the Form M–1 and its instructions. These improvements in reporting, together with stronger enforcement tools authorized by the Affordable Care Act, are designed to reduce MEWA fraud and abuse, protecting consumers from unpaid medical bills.

**DATES:** *Effective date.* These final rules are effective on April 1, 2013. *Applicability dates:* These final rules pertaining to Form M–1 filings generally apply for all filing events beginning on or after July 1, 2013, except that in the case of the 2012 Form M–1 annual report, the deadline is now May 1, 2013 with an extension until July 1, 2013 available. The rules pertaining to Form 5500 annual reporting will be applicable for all Form 5500 Annual Return/Report filings beginning with the 2013 Form 5500.

**FOR FURTHER INFORMATION CONTACT:** Allison Goodman or Suzanne Bach, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

*Customer Service Information:* Individuals interested in obtaining information from the Department of Labor concerning employment-based health coverage laws may call the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visit the Department of Labor's Web site (*http://www.dol.gov/ebsa*). Information on health reform can be found at *http://www.healthcare.gov*.

## I. Executive Summary

### *A. Purpose of the Regulatory Action*

1. Need for Regulatory Action

ERISA section 101(g), 29 U.S.C. 1021(g), as amended by the Affordable Care Act, directs the Department of Labor (the Department) to promulgate rules requiring MEWAs that are not group health plans (non-plan MEWAs) to register with the Secretary of Labor (the Secretary) prior to operating in a State. The statute also allows the Department to promulgate rules requiring non-plan MEWAs to report annually for the purpose of determining the extent to which the requirements of ERISA part 7 are being carried out in connection with such benefits. While the statutory authority is directed at non-plan MEWAs, the Department asserts its authority under ERISA sections 505, 29 U.S.C. 1135, 104, 29 U.S.C. 1024(b), and 734, 29 U.S.C. 1191c, consistent with the MEWA annual reporting rule promulgated in 2003 (the 2003 rule or 2003 regulation), to apply these filing requirements to MEWAs which are group health plans (plan MEWAs) as well.

The Form M–1 and the MEWA reporting requirements were originally developed under the 2003 rule and used as a mechanism to help States identify MEWAs in order to combat a history of MEWA fraud and abuse. Despite these reporting rules, MEWA abuses persist and often lead to insolvency.[1] As a result, affected employees and their dependents become financially responsible for medical claims even though they previously paid premiums to MEWAs for their medical coverage.[2] These regulations amend the 2003 rule and establish new registration and reporting requirements under the amended section 101(g) of ERISA. Specifically, these final rules establish filing requirements and deadlines that apply to MEWAs annually and upon specified events.

The statute is detailed but not self-implementing, contains ambiguities, and specifically requires the Department to develop regulations. Therefore, these consumer protections cannot be established without these regulations.

2. Legal Authority

The substantive authority for these regulations is generally ERISA section 101(g), which explicitly requires the Department to issue regulations requiring MEWAs to register with the Secretary prior to operating in a State. It further provides the Secretary with authority to issue regulations requiring MEWAs to report annually on their compliance with part 7 of ERISA. Section 505 of ERISA also gives the Secretary authority to prescribe such regulations as necessary or appropriate to carry out the provisions of Title I of ERISA, which includes the amended ERISA section 101(g). Further, ERISA section 734 authorizes the Secretary to promulgate regulations necessary or appropriate to carry out the provisions of ERISA part 7.

In addition, section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I or provide for simplified reporting and disclosure if she finds that such requirements are inappropriate as applied to welfare plans.

### *B. Summary of the Major Provisions of This Regulatory Action*

Paragraph (a) of § 2520.101–2 in these final rules implements the general registration and reporting requirements and explains which entities are required to file. The regulations explain that while the language in section 101(g) of ERISA only applies to non-plan MEWAs, the regulations preserve the structure promulgated as part of the 2003 rule, which required both plan MEWAs and non-plan MEWAs to file the Form M–1 based on authority found in sections 505 and 734 of ERISA.

Paragraph (b) defines the terms used in the final regulations, with some additions and modifications from the 2003 rule. Paragraph (c) sets forth the requirement that, with certain exceptions, the administrators of MEWAs and certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to as Entities Claiming Exception or ECEs) file reports with the Department.

Paragraph (d) describes how MEWAs and ECEs will comply with the final rules by filing the Form M–1, and the conditions under which the Secretary may reject a filing.

Paragraphs (e) and (f) set forth the timeframes when MEWAs and ECEs must file the Form M–1. Paragraph (g) directs that the Form M–1 be filed electronically. The information provided through Form M–1 filings will then be accessible by the public and other interested parties such as State regulators.

Paragraph (h) explains the civil penalties that may result from a failure to comply with these final rules. Civil penalties for failure to file a report required by ERISA section 101(g) or § 2520.101–2 have been applicable for non-plan MEWAs under ERISA section 502(c)(5) since May 1, 2000.

These final rules also amend regulations under ERISA sections 103 and 104 to further enhance the Department's ability to enforce § 2520.101–2 by making the filing of the Form M–1 an integral part of compliance with ERISA's annual reporting requirements for plans subject to the Form M–1 filing requirements under § 2520.101–2. As a result, failure to provide information on the Form 5500 about compliance with the requirement to file a Form M–1 may result in the rejection of the Form 5500 as incomplete and the assessment of civil penalties under ERISA section 502(c)(2).

Finally, new criminal penalties were added by the Affordable Care Act under ERISA section 519 for any person who knowingly submits false statements or false representations of fact in connection with a MEWA's financial condition, the benefits it provides, or its regulatory status as a MEWA. The Affordable Care Act also amended ERISA section 501(b) to impose criminal penalties on any person who is convicted of violating the prohibition in ERISA section 519. The final rules retain the cross-reference to sections 501(b) and 519 for the purpose of implementing these new rules as these provisions relate to filing a Form M–1.

Final rules published elsewhere in today's **Federal Register** provide further guidance with respect to ex parte cease

[1] *See, e.g., Chao* v. *Graf,* 2002 WL 1611122 (D. Nev. 2002), *In re Raymond Palombo, et al.,* 2011 WL 1871438 (Bankr. C.D. CA 2011) and *Solis* v. *Palombo,* No. 1:08–CV–2017 (N.D. Ga 2009); *Chao* v. *Crouse,* 346 F.Supp.2d 975 (S.D. Ind. 2004).

[2] *See* Kofman, Mila, Bangit, Eliza, and Lucia, Kevin, *MEWAs: The Threat of Plan Insolvency and Other Challenges* (The Commonwealth Fund March 2004), and *Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40 *Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40.

and desist and summary seizure orders for MEWAs.

*C. Costs and Benefits*

These final regulations are designed to impose a minimal amount of burden on legally compliant MEWAs and ECEs while implementing the Secretary's authority under the Affordable Care Act to take enforcement action against fraudulent or abusive MEWAs and working to protect health benefits for businesses and their employees. This rule implements the new provisions while preserving the filing structure and provisions of the 2003 rule, which directed plan MEWAs and non-plan MEWAs to file the Form M–1.

The additional filing requirements will enhance the State and Federal governments' joint mission to take enforcement action against fraudulent and abusive MEWAs, thus limiting the losses suffered by American workers, their families, and businesses when abusive MEWAs become insolvent and fail to reimburse medical claims.

Under the final regulations, MEWAs and ECEs will incur costs to fill out and electronically file the Form M–1 and Form 5500. The Department estimates that the annualized cost may be approximately $0.1 million. As is common with regulations implementing new policies, there is considerable uncertainty arising from general data limitations and the degree to which economies of scale exist for disclosing this information. Nonetheless, the Department believes that these final regulations lower overall administrative costs from the 2003 rule because of the move to an electronic only filing system.

In accordance with Executive Orders 12866 and 13563, the Department believes that the benefits of this regulatory action justify the costs.

## II. Background

The term ''multiple employer welfare arrangement'' (MEWA) is defined in section 3(40) of ERISA, 29 U.S.C. 1002(40), in pertinent part, as an employee welfare benefit plan, or any other arrangement (other than an employee welfare benefit plan), which is established or maintained for the purpose of offering or providing welfare benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that such term does not include any such plan or other arrangement which is established or maintained under or pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements, by a rural electric cooperative, or by a rural telephone cooperative association. For purposes of this definition, two or more trades or businesses, whether or not incorporated, shall be deemed a single employer if such trades or businesses are within the same control group. The term ''control group'' means a group of trades or businesses under common control. The determination of whether a trade or business is under ''common control'' with another trade or business shall be determined under regulations of the Secretary applying principles similar to the principles applied in determining whether employees of two or more trades or businesses are treated as employed by a single employer under section 4001(b) of ERISA, 29 U.S.C. 1301(b), except that, for purposes of this paragraph, common control shall not be based on an interest of less than 25 percent.[3]

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, 110 Stat. 1936) (1996)) (HIPAA) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. HIPAA also added section 101(g) to ERISA, providing the Secretary with the authority to require, by regulation, annual reporting by non-plan MEWAs. The Secretary exercised the authority under the HIPAA provision by creating the Form M–1 under a 2000 interim final rule and 2003 rule.[4] Those rules generally required the administrator of both non-plan and plan MEWAs and ECEs to file the Form M–1 annually with the Secretary. The purpose of this form was to allow the Department to determine whether the requirements of part 7 were being met. Part 7 of ERISA includes statutory amendments made by HIPAA and other statutes for which MEWAs must annually report compliance.

The original MEWA reporting requirement created under HIPAA was also enacted in response to a 1992 General Accounting Office (GAO) report[5] that detailed a history of MEWA fraud and abuse.[6] To combat fraudulent MEWAs, the GAO recommended that the Department develop a mechanism to help States identify MEWAs. Although the annual MEWA reporting rules enabled the Department to develop a registry of MEWAs that filed the Form M–1, the requirement alone has not stopped the abuses discussed in the GAO report. MEWAs are frequently marketed by unlicensed entities that do not comply with State insurance reserve, contribution, and consumer protection requirements. As a result, such entities often offer health coverage at rates substantially lower than licensed insurers, making them particularly attractive to some small employers that find it difficult to obtain affordable health insurance for their employees. Unfortunately, due to insufficient funding and inadequate reserves, and in some situations, excessive administrative fees and fraud, some MEWAs have become insolvent and unable to pay medical benefit claims. This results in affected employees and their dependents becoming financially responsible for paying medical claims even after they paid premiums for their medical coverage. The unfortunate reality is that currently, the Department often does not find out about insolvent or fraudulent MEWAs until significant harm has occurred to employers and participants. Furthermore, while the Department—often working with State insurance departments—has had some success with both civil and criminal cases against MEWA operators, the monetary judgments are often uncollectible, leaving the employers and/or individual participants without coverage for claims that can be considerable.[7]

[3] This provision was added to ERISA by section 302(b) of the Multiple Employer Welfare Arrangement Act of 1983, Public Law 97–473, 96 Stat. 2611, 2612 which also amended section 514(b) of ERISA, 29 U.S.C. 1144(a). Section 514(a) of ERISA provides that State laws that relate to employee benefit plans are generally preempted by ERISA. Section 514(b) sets forth several exceptions to the general rule of section 514(a) and subjects employee benefit plans that are MEWAs to various levels of State regulation depending on whether the MEWA is fully insured. Sec. 302(b), Public Law 97–473, 96 Stat. 2611, 2613 (29 U.S.C. 1144(b)(6)).

[4] 65 FR 7152 (02/11/2000) and 68 FR 17494 (04/09/2003). The Form M–1 is reissued each year in December by the Department and has been modified to address changes to the statutory provisions in part 7 of ERISA.

[5] *See, Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40.

[6] For example, the 1992 GAO report indicated that between 1988 and 1991, MEWAs left at least 398,000 participants and beneficiaries with over $123 million in unpaid claims. Meanwhile more than 600 MEWAs failed to comply with State insurance laws. *See* supra note 3.

[7] *See United States* v. *Gerald Rising, Jr.,* plea agreement, 11–cr–00117–WYD–01 (U.S.D.Ct.CO) (In 2012, the owner of a MEWA that sold stop-loss insurance pled guilty for understating the claim amounts that would trigger stop-loss payments in order to charge excessive fees; the owner also commingled clients' premiums, overcharged fees, and issued fraudulent invoices, to a cost of over $3.6 million to his victims, which included over 250 individuals, businesses and government agencies.) *See also United States* v. *Edwards,* plea agreement, 1:05CR 265 (M.D.N.C. 2006) (In 2005, a MEWA operator, whom the Department showed collected over 36 million dollars in healthcare insurance premiums and failed to obtain health insurance coverage for its employer clients which resulted in thousands of uncovered employees and

Continued

The Patient Protection and Affordable Care Act (Pub. L. 111–148, 124 Stat. 119) and the Health Care and Education Reconciliation Act of 2010 (Pub. L.111–152, 124 Stat. 1029) (these are collectively known as the ''Affordable Care Act''), have established a multipronged approach to MEWA abuses. The principal provisions include sections 6601, 6605, and 6606 of the Affordable Care Act. Section 6601 prohibits false statements and representations in connection with the marketing or sale of a MEWA. Section 6605 enables the Secretary to issue administrative cease and desist orders when MEWAs engage in certain conduct and summary seizure orders against MEWAs in a financially hazardous condition. In addition, section 6606 amended section 101(g) of ERISA. Under this last amendment, MEWAs providing benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA, 29 U.S.C. 1191b(a)(2)), which are not group health plans must now register with the Secretary prior to operating in a State. Congress left untouched the Secretary's authority to issue regulations directing such MEWAs to report, not more frequently than annually, in such form and such manner as the Secretary specifies for the purpose of determining the extent to which the requirements of part 7 of ERISA are being met. These final regulations implement the ERISA section 101(g) MEWA annual reporting provision by directing all MEWAs, including those that are plan MEWAs, to report compliance with the part 7 rules, including the Public Health Service Act (PHS Act) market reforms (PHS Act sections 2701 through 2728) incorporated by reference in ERISA section 715 by the Affordable Care Act. These final regulations also require MEWAs to register with the Department before operating in a State. The additional information provided on the Form M–1 as a result of these final rules will enhance the State and Federal governments' joint mission to prevent harm and take enforcement action against fraudulent and abusive MEWAs, thus limiting the losses suffered by American workers, their families, and businesses when abusive MEWAs become insolvent and fail to reimburse medical claims. These final rules implement the statutory requirements in a way that limits the burden on legitimate MEWAs but gives the Secretary, States, employers, and the participants and beneficiaries of the plans additional information about these entities and a stronger enforcement scheme.

On December 6, 2011, the Department published in the **Federal Register** proposed regulations (76 FR 76222) implementing the new reporting requirements for MEWAs and ECEs. The Department received six comments on the proposed rules. After consideration of the comments received, the Department is publishing these final regulations. While these final rules reflect a few changes and add some clarifications in response to questions posed by commenters, they do not significantly modify the requirements set forth in the proposed rules.

## III. Overview of the Final Regulations

### *A. Amendment of 29 CFR 2520.101–2 Under ERISA Section 101(g).*

To implement the changes made to ERISA section 101(g) by the Affordable Care Act, these final rules amend the 2003 rule. In the 2003 rule, ECEs and MEWAs were largely subject to the same filing requirements. ECEs, however, were only required to submit an annual M–1 filing for the first three years following an origination event. In keeping with this structure, these final rules extend the new filing events prescribed by the Affordable Care Act to MEWAs and ECEs alike. They also preserve the three-year limitation included in the 2003 regulation for ECEs. Based on comments on the proposed rules from the multiemployer plan community, the final rules limit the events that will constitute an origination to those defined as such in the 2003 rule.

Paragraph (a) of § 2520.101–2 in these final regulations describes the provisions of section 101(g) of ERISA that direct MEWAs that provide benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA) to register with the Secretary prior to operating in a State, and to report annually regarding compliance with part 7 of ERISA.

Paragraph (b) defines the terms used in the final regulations, with some additions and modifications from the 2003 rule. Paragraph (c) sets forth the requirement that, with certain exceptions, the administrators of MEWAs or ECEs file reports with the Department.

Paragraph (d) describes how MEWAs and ECEs will comply with the final rules by filing the Form M–1, and the conditions under which the Secretary may reject a filing.

Paragraphs (e) and (f) set forth the timeframes when MEWAs and ECEs must file the Form M–1. Paragraph (g) directs that the Form M–1 be filed electronically. In addition to minimizing errors and providing faster access to reported data, electronic filing will also be less burdensome on the filer. Once information about the MEWA or ECE is entered into the system, filers will have the option of allowing the system to copy information provided on a past filing into a new filing. This transfer of past information provides filers an easy way to update or verify information. The information provided through Form M–1 filings will then be accessible by the public and other interested parties such as State regulators.

Paragraph (h) explains the civil penalties that may result from a failure to comply with the rule. Civil penalties for failure to file a report required by ERISA section 101(g) or § 2520.101–2 have been applicable for non-plan MEWAs under ERISA section 502(c)(5) since May 1, 2000.[8]

Finally, new criminal penalties were added by the Affordable Care Act under ERISA section 519 for any person who knowingly submits false statements or false representations of fact in filing reports required under the rule.

1. Basis and Scope

These final regulations set forth rules implementing section 101(g) of ERISA, as amended by section 6606 of the Affordable Care Act, which directs MEWAs that are not group health plans to register with the Secretary prior to operating in a State. These regulations also update the existing requirement in section 101(g) of ERISA, that MEWAs, which are group health plans, and certain other entities claiming an exception, file the Form M–1 annually and upon the occurrence of specified events. While the language in section

approximately $8 million in unpaid claims), and *Solis* v. *W.I.N. Ass'n, L.L.C., et. al.,* slip op. 4:11-cv-00616 (S.D. Tex. 2011) (The Department investigated a MEWA which failed to make payments on health care claims, charged excessive fees, engaged in self-dealing, and failed to disclose fees to the client employers in the plan. The Department obtained a Consent Judgment and Order against the MEWA operators for leaving hundreds of participants without coverage and permanently enjoining them from acting as fiduciaries in the future. Also, the court authorized the Secretary to bring a collection action for the plan losses against one of the MEWA operators relative to his ability to restore those plan losses.) For additional information about MEWAs, see *http://www.dol.gov/ebsa/newsroom/fsMEWAenforcement.html.*

[8] Under these final regulations, similar civil penalties under ERISA section 502(c)(2) may apply to plan MEWAs and ECEs required to file the Form M–1 that fail to answer questions on the Form 5500 about compliance with the requirement to file a Form M–1. *See* section B of this preamble for the changes that are being made to §§ 2520.103–1, 104–20, and 104–41 to further enhance the Department's ability to enforce these provisions with regard to MEWAs and ECEs that are group health plans.

101(g) of ERISA only applies to non-plan MEWAs, these final rules preserve the structure promulgated as part of the 2003 regulation, which required both plan and non-plan MEWAs to file the Form M–1, based on authority found in sections 505 and 734 of ERISA. Section 505 of ERISA states that the Secretary may prescribe such regulations as she finds necessary or appropriate to carry out the provisions of Title I of ERISA. Section 734 of ERISA allows the Secretary to promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7 of ERISA.

One commenter questioned the Department's authority to require ECEs to file a Form M–1 prior to operating in a State. As explained in the preamble to the 2003 rule, the Department has set forth procedures for administrative hearings to obtain a determination by the Secretary that a collectively bargained plan is exempted from ERISA's definition of a MEWA. 29 CFR 2510.3–40. An entity that has a determination from an Administrative Law Judge (ALJ) that it is such a collectively-bargained plan is not required to file a Form M–1 while the opinion remains in effect unless the circumstances underlying the determination change. Entities may, however, claim the exemption on their own accord and sometimes do so incorrectly, including as part of an insurance fraud scheme using sham unions and collective bargaining agreements to market health coverage to small employers. The Secretary remains concerned about MEWA operators who avoid State insurance regulation by making false assertions that the arrangement is pursuant to a collective bargaining agreement. The requirement that ECEs file the Form M–1 for only three years after an origination event continues to provide an important enforcement tool while imposing little burden on bona fide collectively bargained plans. Bona fide collectively bargained plans also benefit from the early identification of MEWA operators using sham unions and collective bargaining agreements. Consequently, based on the Department's authority under ERISA sections 505 and 734, the final rules preserve the three-year limitation included in the 2003 regulation for ECEs.

2. Definitions

*a. Operating.* Paragraph (b)(8) of § 2520.101–2 of the proposed and these final rules adds a definition of ''operating'' and defines it as any activity including but not limited to marketing, soliciting, providing, or offering to provide benefits consisting of medical care. This definition, which includes marketing and administrative activities, governs when Form M–1 filings must be made. Some commenters raised concerns that the definition in the proposed rules could be interpreted broadly to include participants receiving medical care in a State in which the MEWA or ECE has not been providing medical benefits and for which it is not otherwise required to make any filings. These commenters noted that MEWAs or ECEs would be unable to comply with the requirement to file the Form M–1 30 days before operating in an additional State because they would not know when a participant planned, for instance, to move or travel to a new State. The Department never intended for the definition of operating to apply to the receipt of medical care without any action by, or on behalf of, the MEWA or ECE to market, solicit, provide, or offer to provide medical benefits to a participating employer in that State.

Commenters also noted that, in general, they would not be aware in advance if an employer or union, on its own accord, distributes information about medical care in a State in which the MEWA or ECE has not been operating and is not registered. ECEs, in particular, may not be aware of a contract awarded for work in a new State to a company that is part of a collective bargaining agreement. The Department agrees that there are circumstances in which it would be difficult, if not impossible, for a MEWA or ECE to file the Form M–1 30 days before operating in an additional State. Consequently, while the Department has not revised the definition of operating, as discussed later in this preamble, provisions in paragraph (e) in these final rules on when a MEWA or ECE must file when it begins operating in an additional State have been revised to address this concern.

*b. Origination and Special Filing Events.* The 2003 rule used the term ''origination'' to determine if additional filings were necessary for both MEWAs and ECEs. As in the proposed rules, the Department only uses the term ''origination'' when it refers to events that trigger an additional filing by ECEs in the final rules. The term ''registration'' also continues to be used to refer to filings by MEWAs.

The definition of origination, however, has been modified in the final rules. This change responds to a commenter who found the provisions in the proposed rules relating to the application of the three-year limitation to ECEs that begin operating in additional States to be confusing. These final rules have been adjusted to clarify that an ECE is not required to file a Form M–1 solely because it begins operating in an additional State or experiences a material change after the three-year period following any of the three origination events: (i) The ECE first begins operating with regard to the employees of two or more employers (including one or more self-employed individuals); (ii) the ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated at least three years prior to the merger); or (iii) the number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger).

In paragraph (b)(9)(ii) and (v) of § 2520.101–2 of the proposed rules, the definition of origination also included an ECE that begins operating in an additional State or experiences a material change. To clarify that the three-year rule does not restart or extend when those two events occur, they were moved to a new paragraph (b)(11) in the final rules on special filing events. Additionally, the reference to the three-year period during which filings are required was removed from the definition of origination. In the final rules, the paragraph (b)(9) origination events and the corresponding filing rules in paragraph (c)(1)(ii) now clarify that only the events in paragraph (b)(9) restart or extend the three-year period for ECEs.

*c. Reporting.* As in the proposed rules, the final rules add a definition of ''reporting.'' ''Reporting'' or ''to report'' means to file the Form M–1 as required pursuant to section 101(g) of ERISA; § 2520.101–2; or the instructions to the Form M–1. The term ''reporting'' is used in order to correspond to the terminology of § 2560.502c–5, which uses the generic term ''report'' to describe the Form M–1 filing process, including the annual report as well as registration, origination, and all other required M–1 filings.

*d. State.* The final rules also, like the proposed rules, add a definition of ''State'' and define the term by reference to § 2590.701–2. This definition was added because MEWAs must register, and ECEs must make an origination filing, prior to operating in a State.

3. Persons Required to Report

Paragraph (c) of § 2520.101–2 of the final rules set forth the persons required to report. As under the 2003 rule and the proposed rules, the final rules direct the administrator of a MEWA that provides benefits consisting of medical care, whether or not the MEWA is a group health plan, to file the Form M–1. It also requires filing by the administrator of an ECE that offers or provides coverage consisting of medical care. Several commenters suggested changes to this section. One commenter sought to have third party administrators carved out of the definition of administrator. Another sought to have affiliated service groups exempted from the filing requirements. The Department considered these comments but declines to modify these longstanding provisions promulgated as part of the 2003 rule. However, as noted above, to clarify the timing requirements for filings required of ECEs, this paragraph references the requirement that such filings be made only during the three years after the ECE is originated.

4. Information To Be Reported

Paragraph (d) of the final rules is unchanged from the proposed rules. It clarifies that the reporting requirements of § 2520.101–2 will only be satisfied by filing a completed copy of the Form M–1, including any additional statements required pursuant to the Form M–1 instructions. One commenter wanted even more detailed financial information collected on the Form M–1. As noted earlier, after consideration of the comments made, the Department has reviewed the Form M–1 but made only minor changes to the content of the Form M–1 that was proposed to correspond to these final rules. A notice announcing the availability of the finalized revisions to the Form M–1 and its instructions are published elsewhere in this edition of the **Federal Register**.

5. Reporting Requirements and Timing

The final rules retain from the 2003 rule and the proposed rules that both MEWAs and ECEs must file the Form M–1 annually, with ECEs only having to file annually for the first three years following an origination. However, to clarify the application of the new registration requirements, the annual filing requirements were moved from paragraph (e) to paragraph (f) (and paragraphs (f) and (g) were redesignated paragraphs (g) and (h)).

As mentioned previously, MEWAs and ECEs are also subject to additional (non-annual) filings in certain circumstances. Several non-annual filing events were included in the 2003 regulation, but, as previously explained, these filings were relabeled and expanded in the proposed rules and these final rules to implement changes to the statutory language. The 2003 regulation and the proposed rules generally required an additional filing when a MEWA or ECE: (1) First began offering or providing coverage for medical care to employees of two or more employers; (2) began offering or providing coverage for medical care to employees of two or more employers after a merger with another MEWA or ECE; or (3) increased the number of employees receiving medical care under the MEWA or ECE by at least 50 percent over the number of employees on the last day of the previous calendar year. In the proposed rules, the first event was modified to conform to the statutory language under ERISA section 101(g) directing MEWAs to register with the Secretary by filing a Form M–1 prior to operating in any State. Additionally, the proposed rules directed that a filing be made in the event a MEWA (and in some cases an ECE) expands its operations into additional States or experiences a material change as defined in the Form M–1 instructions. These filing events are preserved in these final rules.

Several commenters sought to limit filings due to a material change. This filing event was added to direct an entity to update its Form M–1 filing in the event that it experienced changes in certain financial or custodial information. The Department intends to follow the same basic structure for these filings as it has indicated it will for filings related to operating in a State. So, for example, if a MEWA or ECE takes action to add or remove an individual who is a marketer or promoter, the MEWA or ECE would have experienced a material change and would need to report. However, if the MEWA or ECE employs a third party (and appropriately identifies that entity in its filings) and the third party takes action to add or remove an individual who is a marketer or promoter, the MEWA or ECE will not have experienced a material change and no additional filing will be required. In the event an entity experiences a material change, the online filing system will allow them to log on, import data from the most recently completed filing, and make the necessary changes. The regulatory provision is retained as proposed, but in response to these comments, the Department will continue to ensure the electronic filing system minimizes the additional burden on entities that experience a material change. Consistent with the 2003 rule and the proposed rules, these final rules direct MEWAs to submit filings for the duration of their existence and ECEs to file only during the three-year period following an origination. As noted above, ECEs that begin operating in a new State or experience a material change during their three-year filing period report those events. ECEs that are not required to file because they are outside their three-year period do not need to report those events.

The final rules also apply new timing standards on MEWAs and ECEs for these additional filings. Under the 2003 regulation, MEWAs and ECEs filed the Form M–1 within 90 days of the occurrence of certain events. The proposed and these final rules direct entities to file 30 days prior to or within 30 days of the event, depending on the type of event which prompts the filing. The timing requirements in paragraph (e) implement section 6606 of the Affordable Care Act, which provides that the filing must happen ''prior to operating in a State'' and will also facilitate the Department's timely receipt of information related to the other filing events described above. One commenter suggested that ECEs not be required to file 30 days prior to operating in an additional State because it might be difficult for the entity to determine when the event occurs. The Department considered this comment and, as previously stated, has revised the provision to address this concern. In these final rules, a MEWA or ECE will need to make a registration or special filing within 30 days of knowingly operating in any additional State or States. The Department does, however, expect MEWAs and ECEs to periodically monitor the activities of participating employers so that they become aware of any unilateral actions by participating employers that have caused them to begin operating in an additional State. Knowledge by a MEWA or ECE includes knowledge by an employee or agent of the MEWA or ECE.

The provision included in the proposed rules to discourage ''blanket filings,'' (i.e., registration, origination, or special filings that cover multiple States, unless the filer expects to begin operating in all the named States in the near future), was retained in these final rules. Blanket filings that list States where the filer has no immediate intent to operate could frustrate the law's goal of gathering and maintaining timely and accurate information on MEWAs. Under this provision, a filing is considered lapsed with respect to a State if benefits

consisting of medical care are not offered or provided in the State during the calendar year immediately following the filing. A new filing would be required if the filer intends to resume operating in that State.

To minimize the burden of compliance, the final rules continue to permit MEWAs and ECEs to make a single filing to satisfy multiple filing events so long as the filing is timely for each event.

As in the 2003 rule and the proposed rules, filing extensions are available. Any filing deadline that is a Saturday, Sunday, or federal holiday is automatically extended to the next business day. The proposed rules provided a more substantial extension for annual filings if MEWAs and ECEs requested such an extension following the procedure outlined in the instructions to the Form M–1. A question was raised regarding whether extensions were limited to annual filings. The Department considered this option and believes that any filing should be eligible for an extension so long as the request is made in a timely manner and in accordance with the Form M–1 instructions. A modification to this effect was made to the operative language in paragraph (e) of § 2520.101–2 of the final rules.

6. Electronic Filing

As in the proposed rules, paragraph (g) of § 2520.101–2 of the final rules eliminates the option to file a paper copy of the completed Form M–1. As is now the case for Form 5500 Annual Return/Report filings required under Title I of ERISA and consistent with the goals of E-government, as recognized by the Government Paperwork Elimination Act[9] and the E-Government Act of 2002,[10] these final rules require that the Form M–1 be filed electronically. Electronic filing of benefit plan information, among other program strategies, facilitates EBSA's achievement of its Strategic Goal to ''assure the security of the retirement, health and other workplace related benefits of American workers and their families.'' EBSA's strategic goal directly supports the Secretary of Labor's Strategic Goal to ''secure health benefits.'' [11] A cornerstone of the Department's enforcement program is the collection, analysis, and disclosure of benefit plan information. Electronic filing minimizes errors and provides faster access to reported data, assisting EBSA in its enforcement, oversight, and disclosure roles and ultimately enhancing the security of plan benefits. Electronic filing of the Form M–1 also reduces the paperwork burden and costs related to printing and mailing forms and, with the use of secure account access, allows updating of previously reported information to facilitate simplified future reporting. Finally, consistent with current practice, the information will be available for reference by participants, beneficiaries, participating employers, and other interested parties such as State regulators. A notice announcing the availability of the updated Form M–1 filing system will be published elsewhere in this edition of the **Federal Register**.

7. Penalties

*a. Civil penalties and procedures.* The final rules retain the references to section 502(c)(5) of ERISA, 29 U.S.C. 1132(c)(5) and § 2560.502c–5 regarding civil penalties and procedures.

*b. Criminal penalties and procedures.* Affordable Care Act section 6601 added ERISA section 519, which prohibits a person from making false statements or representations of fact in connection with a MEWA's financial condition, the benefits it provides, or its regulatory status as a MEWA. The Affordable Care Act also amended ERISA section 501(b) to impose criminal penalties on any person who is convicted of violating the prohibition in ERISA section 519. The final rules retain the cross-reference to sections 501(b) and 519 of ERISA, 29 U.S.C. 1131 and 1149, for the purpose of implementing these new rules as they relate to filing a Form M–1 prior to operating in a State or other registration, origination, and special filings.

*c. Cease and desist and summary seizure and procedures.* Section 6605 of the Affordable Care Act added section 521 to ERISA, which authorizes the Secretary to issue cease and desist orders, without prior notice or a hearing, when it appears to the Secretary that the alleged conduct of a MEWA is ''fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.'' This section also allows the Secretary to issue an order to seize the assets of a MEWA that the Secretary determines to be in a financially hazardous condition. The regulation providing guidance on the cease and desist orders and summary seizure rules published elsewhere in this **Federal Register** also includes regulatory guidance on the procedural rules for this process. A cease and desist order containing a prohibition against transacting business with any MEWA or plan would prevent the MEWA or a person from avoiding the cease and desist order by shutting the MEWA down and re-establishing it in a new location or under a new identity.

As such, the final rules retain the cross-reference to section 521 of ERISA and § 2560.521 regarding the Secretary's authority to issue cease and desist and summary seizure orders.

*B. Amendment to Regulations Under ERISA Sections 103 and 104*

Pursuant to authority in ERISA section 104(a)(3) to establish reporting exemptions and simplified reporting for welfare benefit plans, this rulemaking also makes filing the Form M–1 an integral part of compliance with ERISA's simplified reporting requirements by requiring all plans subject to the Form M–1 filing requirements under § 2520.101–2 to file a Form 5500 Annual Return/Report, and include specific Form M–1 compliance information. The revisions to the Form 5500 and instructions reflecting these final rules are being published simultaneously as a Notice of Adoption of Revisions to the Form 5500 Annual Return/Report in today's **Federal Register**. That document includes a discussion of the changes to the Form 5500 and instructions as well as the Department's findings required under sections 104(a)(3) and 110 of ERISA with regard to the use of the revised Form 5500 as a simplified report, alternative method of compliance, and/or limited exemption pursuant to § 2520.103–1(b).

We requested but received no comments on these changes to the annual reporting requirements; therefore, these final rules retain the changes proposed to further enhance the Department's ability to enforce the Form M–1 filing requirements under § 2520.101–2, except for technical changes and a clarification that all plans required to file the Form M–1 (plan MEWAs and ECEs) are required to file a Form 5500 and to answer the Form M–1 compliance questions on the Form 5500.[12]

[9] Title XVII, Public Law 105–277, 112 Stat. 2681 (Oct. 21, 1998).

[10] Public Law 107–347, 116 Stat. 2899 (Dec. 17, 2002).

[11] For further information on the Department of Labor's Strategic Plan and EBSA's relationship to it, see *http://www.dol.gov/_sec/stratplan/.*

[12] Unlike plan MEWAs that are under a permanent requirement to file the Form M–1, 29 CFR 2520.101–2 requires an ECE to file the Form M–1 only during the three years following each origination event (an ECE may experience more than one origination event). Therefore, the final Form 5500 rules for plans required to file the Form M–1 apply to ECEs only during the periods in which ECEs are required to file the Form M–1.

The primary change to § 2520.103–1 being adopted in this rule is the addition of a new paragraph (f) regarding the content of the annual report. Existing paragraph (f) of § 2520.103–1 is redesignated paragraph (g), but is otherwise unchanged. New § 2520.103–1(f) applies to all plans that are subject to the Form M–1 filing requirements of § 2520.101–2 during the plan year. This change provides that all such plans must demonstrate compliance with § 2520.101–2 (filing the Form M–1) in order to satisfy the annual reporting requirements of § 2520.103–1. Pursuant to ERISA section 502(c)(2), 29 U.S.C. 1132(c)(2), a plan administrator who fails to file a Form 5500 Annual Return/Report with a proof of compliance with § 2520.101–2 may be subject to a civil penalty of up to $1,100 a day (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) for each day a plan administrator fails or refuses to file a complete report. Although ERISA sections 505 and 734 give the Secretary the authority to require MEWAs and ECEs that are employee benefit plans to comply with the requirements of § 2520.101–2, unlike MEWAs that are not employee benefit plans, there is no specific ERISA civil penalty applicable to plan MEWAs and ECEs for a failure to comply with those requirements. These changes to the Form 5500 annual reporting requirements for plan MEWAs and ECEs will enhance the Department's ability to enforce the Form M–1 filing requirements.

The final rules include conforming changes adding references to the new § 2520.103–1(f) and other conforming changes in §§ 2520.103–1(a), (b), (c) and § 2520.104–41. A corresponding change is also made to § 2520.104–20 to expressly provide that the limited filing exemption under § 2520.104–20 is no longer available to plan MEWAs and ECEs with fewer than 100 participants required to file the Form M–1 (small plans). In addition, a new paragraph (E) has been added to § 2520.103–1(c)(2)(ii) to provide that small plans subject to the Form M–1 filing requirements are not eligible to file the Form 5500–SF (Short Form 5500 Annual Return/Report of Small Employee Benefit Plan) under § 2520.103–1(c)(2)(ii) and § 2520.104–41.[13]

Although small plans subject to the Form M–1 filing requirements are not eligible to file the Form 5500–SF, these plans are still eligible for the simplified Form 5500 annual reporting for small welfare plans, and these plans that meet all of the requirements for the relief under § 2520.104–44 are exempt from certain financial reporting and audit requirements. Small plan MEWAs and ECEs that qualify for the relief provided by 29 CFR 2520.104–44 would only need to file the Form 5500 Annual Return/Report and, if applicable, Schedule A (Insurance Information) and Schedule G, Part III (nonexempt transactions).[14] Such plans are no longer eligible to use the Form 5500–SF because that form does not include Schedule A insurance information. The Department believes that plans subject to these final rules that claim to provide insured benefits should be required to complete the Schedule A so that enforcement officials and the public have information about the insurance policy and insurance company through which the plan is providing insurance coverage. Thus, these changes give the Secretary an important enforcement tool while imposing minimal burden on small plan MEWAs and ECEs.

## IV. Regulatory Impact Analysis

### *A. Executive Order 12866 and 13563*

Under Executive Order 12866, a ''significant'' regulatory action is subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a ''significant regulatory action'' is an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is not economically significant within the meaning of section 3(f)(1) of the Executive Order but is significant under section 3(f)(4) of the Executive Order because it raises novel legal or policy issues arising from the President's priorities. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Department estimates that the total cost of this rule would be approximately $137,400 in the first year, or an average of approximately $284 for each of the 484 entities expected to file the Form M–1. These costs are all associated with the information collection request contained in these rules and, therefore, are discussed in the Paperwork Reduction Act Section, below.

#### 1. Summary and Need for Regulatory Action

As discussed earlier in this preamble, section 6606 of the Affordable Care Act amended section 101(g) of ERISA to require the Secretary of Labor to promulgate regulations requiring MEWAs providing medical care benefits (within the meaning of section 733(a)(2) of ERISA) that are not ERISA-covered group health plans (non-plan MEWAs) to register with the Secretary before operating in a State.

The original MEWA reporting requirement in ERISA section 101(g) was enacted by Congress as part of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 in response to a 1992 General Accounting Office (GAO) recommendation.[15] The GAO recommended that the Department develop a mechanism to help States identify fraudulent and abusive MEWAs. The HIPAA provision led to the Department creating the Form M–1 under a 2000 interim final rule and 2003 final rule.[16]

ERISA section 101(g), as amended by the Affordable Care Act, directs the Department of Labor (the Department) to promulgate rules requiring MEWAs that are not group health plans (non-plan MEWAs) to register with the Secretary of Labor (the Secretary) prior to operating in a State. ERISA sections 505 and 734 provide the Secretary with the authority to require plan MEWAs and

[13] In addition, an unrelated technical correction to 29 CFR 2520.104–41 is being included in this rulemaking to add an express reference to the Form 5500–SF.

[14] Neither these final regulations nor the companion revisions to the Form 5500 change the eligibility requirements for the limited exemption under 29 CFR 2520.104–44. The Department expects that many plan MEWAs and ECEs will not satisfy the unfunded and insured eligibility requirements in the limited exemption and will continue to be ineligible for the reporting relief under 29 CFR 2520.104–44.

[15] *See, Employee Benefits: States Need Labor's Help Regulating Multiple Employer Welfare Arrangements,* March 1992, GAO/HRD–92–40.

[16] 65 FR 715 (02/11/2000) and 68 FR 17494 (04/09/2003). The Form M–1 has been updated and is reissued each year in December by the Department and modified periodically to address changes to the statutory provisions in part 7 of ERISA.

ECEs to comply with the Form M–1 reporting requirements,[17] but because ERISA section 101(g) only applies to non-plan MEWAs, only non-plan MEWAs are subject to civil penalties under ERISA section 502(c)(5) for failure to comply with the Form M–1 requirements.[18] In order to enhance the Department's ability to enforce the Form M–1 requirements and ensure that MEWAs are subject to the same rules under the law, this final rule will require all plan MEWAs to prove compliance with the Form M–1 filing requirements in order to satisfy the ERISA annual reporting requirements.[19] In amending the Department's MEWA reporting regulation to require MEWAs to register with the Secretary before operating in a State, these final rules direct Form M–1 filers to provide additional information regarding the MEWA or ECE and apply new timing standards for the filings that are made when a MEWA's or ECE's status changes. These amendments will aid the Department in its oversight of MEWAs consistent with its expanded authority provided by the Affordable Care Act [20] and allow the Department to provide critical information to State insurance departments that coordinate their investigations and enforcement actions against fraudulent and abusive MEWAs with the Department.

Over the last several years, the Department has observed a downward trend in the number of MEWAs that file the Form M–1, raising concerns that some existing MEWAs are not filing the form. Under the 2003 regulation, the Department has the ability to assess penalties against MEWAs that fail to file the Form M–1 only in limited circumstances and if a determination regarding plan status was made by the Secretary. To address this issue and encourage compliance with the Form M–1 filing requirement, the Department also is amending, as part of this regulatory action, the Form 5500 annual reporting requirements. The amendment will require all plans subject to the Form M–1 filing requirements, regardless of plan size or type of funding,[21] to file the Form 5500 Annual Return/Report and demonstrate on the form compliance with Form M–1 filing requirements. Failure to do so may result in an assessment of penalties under ERISA section 502(c)(2).[22]

These amendments to the Department's MEWA reporting standards would provide a cost effective means to implement the expanded MEWA reporting as enacted in the Affordable Care Act. As stated above, the Department estimates that the average cost for each entity that the Department expects to file the revised Form M–1 would average approximately $284 during the first year and $181 during each subsequent year.

2. Benefits of Rule

As discussed earlier in this preamble, section 6606 of the Affordable Care Act amended section 101(g) of ERISA directing the Secretary to promulgate regulations requiring non-plan MEWAs providing medical care benefits (within the meaning of section 733(a)(2) of ERISA) to register with the Secretary before operating in a State. By implementing this statutory amendment, the Department would receive prior notice of a MEWA's intention to commence operations in a State. Such notification would help the Department and State insurance commissioners to ensure that MEWAs are being lawfully operated and that sufficient insurance has been purchased or adequate reserves established to pay benefit claims before the MEWAs begin operating [23] in a State. These final rules would improve MEWA compliance and deter fraudulent and abusive MEWA practices, thereby protecting and securing the benefits of participants and beneficiaries by ensuring that MEWA assets are preserved and benefits timely paid. These potential benefits have not been quantified, but the Department expects that they will justify the costs.

3. Costs of Rule

The costs of the rule are associated with the amendments to the Form M–1 and Form 5500 reporting requirements and are therefore discussed in the Paperwork Reduction Act section, below.

*B. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the proposed regulation, for OMB's review.

Although no additional public comments were received that specifically addressed the paperwork burden analysis of the information collections at the proposed rules stage, the comments that were submitted and described earlier in this preamble, contained information relevant to the costs and administrative burdens attendant to the proposals. The Department took into account such public comments in connection with making changes to the final rules and in developing the revised paperwork burden analysis summarized below.

In connection with publication of these final rules, the Department submitted a revision to the ICR under OMB Control Number 1210–0116. OMB approved the revised ICR, which is scheduled to expire on February 29, 2016. A copy of the revised ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov*.

PRA ADDRESSEE: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202)

[17] In the preamble to the 2000 interim final rule, the Department explained ''[a]n important reason for requiring these groups to file is that the administrator of a MEWA may incorrectly determine that it is a group health plan or that it is established or maintained pursuant to a collective bargaining agreement. A reporting requirement limited only to MEWAs that are not group health plans may not result in reporting by many such MEWAs, thus greatly reducing the value of the data collected.'' See 65 FR 7152, 7153 (Feb. 11, 2000).

[18] Pursuant to ERISA section 502(c)(5), a civil penalty of up to $1,100 (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) a day may be assessed for each day a non-plan MEWA fails to file a complete Form M–1.

[19] Pursuant to ERISA section 502(c)(2), a plan administrator who fails to file a Form 5500 Annual Return/Report with a proof of compliance with the M–1 filing requirements may be subject to a civil penalty of up to $1,100 a day (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) for each day a plan administrator fails or refuses to file a complete report.

[20] As part of the Affordable Care Act, Congress also enacted ERISA section 521, which authorized the Secretary to issue cease and desist orders, without prior notice or a hearing, when it appears to the Secretary that a MEWA's alleged conduct is fraudulent, creates an immediate danger to the public safety or welfare, or causes or can reasonably be expected to cause significant, imminent, and irreparable public injury. Section 521 also authorizes the Secretary to issue a summary order to seize the assets of a MEWA that the Secretary determines to be in financially hazardous condition. The Department also is finalizing rules for these provisions, which are published elsewhere in today's **Federal Register**.

[21] The final rules expressly provide that the limited exemption for certain unfunded and insured small welfare plans under § 2520.104–20 is not available for any plans subject to the Form M–1 filing requirements. In addition, these plans also are not eligible to use the Form 5500–SF.

[22] A plan administrator who fails to file a Form 5500 with a proof of Form M–1 compliance could be subject to a civil penalty of up to $1,100 a day for each day the plan administrator fails or refuses to file a complete report.

[23] Section 2520.101–2(b)(8) of the proposed rule provides that the term ''operating'' means any activity including but not limited to marketing, soliciting, providing, or offering to provide medical care benefits.

219–4745. These are not toll-free numbers.

Between 2006 and 2010, an average of 484 entities (MEWAs and ECEs) filed the Form M–1 with the Department (a high of 533 in 2006 and a low of 436 in 2010). Of the total filings, on average, 217 were submitted via mail and 267 were submitted electronically through the Form M–1 electronic filing system provided by the Department via the Internet. The fraction filing electronic returns has been increasing and reached nearly 63 percent in 2010. This rule will require all filings to be submitted electronically.

As discussed above and pursuant to section 6606 of the Affordable Care Act, these rules amend the information required to be disclosed on the Form M–1 by adding new data elements. Therefore, the Department assumes that all administrators of MEWAs and ECEs that file the Form M–1 in-house (an estimated 10 percent of filers) would spend two hours familiarizing themselves with the changes to the form that would be made by the final regulations. This would result in a total hour burden of 97 hours (48 entities * 2 hours). The Department estimates that Part I of the Form (the identifying information) would require five minutes to complete. The time required to complete Part II would vary based on the number of States in which the entity provides coverage, and the Department estimates that this would require 60 minutes for single-State filers and 120 minutes for multi-State filers. The Department expects the time required to complete Part III would be 15 minutes for fully-insured filers and 30 minutes for not fully-insured filers. Table 1 below summarizes the estimates of time required to complete each part of the form. Based on the foregoing, the Department estimates that the total hour burden for entities to file the Form M–1 using in-house resources would be 188 hours in the first year with an equivalent cost of $17,900 assuming all work will be performed by an employee benefits professional at $94.91 per hour.[24] The cost to submit electronic filings would be negligible.

The Department estimates that the annual hour burden for Form M–1 filings prepared in-house in subsequent years would be approximately 100 hours as summarized in Table 2.[25] The Department's estimate is based on the assumption that approximately 44 new entities[26] will file the Form M–1 each year, and thus, approximately four new entities will prepare the Form M–1 in-house. The Department estimates that it would take two hours for these administrators, resulting in an hour burden of eight hours. The Department estimates that entities preparing the form in-house would spend four hours completing Part I, 68 hours completing Part II, and 15 hours completing Part III. The equivalent cost of this annual hour burden is estimated to be $8,600, assuming a $94.91 hourly labor rate for an employee benefits professional.

TABLE 1—TIME TO FILL OUT FORM

[Minutes]

| | Fully-insured | | Not fully-insured | |
|---|---|---|---|---|
| | One State | Multi States | One State | Multi States |
| New Filing | 120 | 120 | 120 | 120 |
| Part I | 5 | 5 | 5 | 5 |
| Part II | 60 | 120 | 60 | 120 |
| Part III | 15 | 15 | 30 | 30 |

TABLE 2—HOUR BURDEN TO PREPARE FORM M–1, IN-HOUSE PREPARATION

| | Fully-insured | | Not fully-insured | | Total |
|---|---|---|---|---|---|
| | One State | Multi States | One State | Multi States | |
| # of MEWAs and ECEs | 16 | 18 | 9 | 5 | 48 |
| Review: Year 1 | 32 | 36 | 18 | 11 | 97 |
| New Filing: Subsequent Years | 3 | 3 | 2 | 1 | 9 |
| Part I | 1 | 2 | 1 | 0 | 4 |
| Part II | 16 | 36 | 9 | 11 | 72 |
| Part III | 4 | 5 | 4 | 3 | 16 |
| Total Time: Year 1 | 54 | 78 | 31 | 25 | 188 |
| Total Time: Subsequent Years | 24 | 45 | 15 | 15 | 100 |

1. *Cost Burden*

The Department assumes that 90 percent of the 484 entities (435 entities) that will file the Form M–1 will use third-party service providers to complete and submit the Form M–1.[27] Because the Department is adding additional data elements to the form, the Department assumes that in the year of implementation, all service providers would spend additional time familiarizing themselves with the changes. The Department estimates that entities that use third party service providers would incur the cost of one hour for service providers to review the new rule as service providers likely will provide this service for multiple entities and therefore spread this burden across multiple entities. This results in a one-time cost burden of $41,300 (435 entities * 1 hour * $94.91).

The total estimated cost burden for preparing the form is arrived at by

[24] The Department estimates 2012 hourly labor rates include wages, other benefits, and overhead based on data from the National Occupational Employment Survey (June 2011, Bureau of Labor Statistics) and the Employment Cost Index (September 2011, Bureau of Labor Statistics); the 2010 estimated labor rates are then inflated to 2012 labor rates.

[25] These are rounded values. The totals may differ slightly as a result.

[26] An average of 9 percent of entities originate each year according to Form M–1 data.

[27] This assumption is made in connection with EBSA's principal reporting form, the Form 5500, and was validated through a filer survey.

multiplying the number of filers (found in Table 3) by the amount of time required to prepare the documents (Table 1) and multiplying this result by the hourly cost of an employee benefits professional ($94.91 dollars an hour). Based on the foregoing, the total cost burden for entities that use purchased third-party resources to file the Form M–1 is $119,500 in the first year and $78,200 in later years. Table 3 summarizes the estimates of the cost burden.

TABLE 3—COST BURDEN TO PREPARE FORM M–1, THIRD-PARTY PREPARATION

| | Fully-insured | | Not fully-insured | | Total |
|---|---|---|---|---|---|
| | One State | Multi States | One State | Multi States | |
| # of MEWAs and ECEs | 145 | 163 | 79 | 49 | 435 |
| Review: Year 1 | $13,700 | $15,400 | $7,500 | $4,700 | $41,300 |
| New Filing: Subsequent Years | $0 | $0 | $0 | $0 | $0 |
| Part I | $1,100 | $1,300 | $600 | $400 | $3,400 |
| Part II | $13,700 | $30,900 | $7,500 | $9,400 | $61,400 |
| Part III | $3,400 | $3,900 | $3,700 | $2,300 | $13,400 |
| Total: Year 1 | $32,000 | $51,400 | $19,300 | $16,800 | $119,500 |
| Total: Subsequent Years | $18,300 | $36,000 | $11,800 | $12,100 | $78,200 |

**Note:** The displayed numbers are rounded to the nearest hundred and therefore may not add up to the totals.

These regulations direct a plan that is subject to Form M–1 filing requirements to include proof of Form M–1 compliance as part of the Form 5500. Accordingly, the Department is adding a new Part III to the Form 5500, that asks for information regarding whether the employee welfare benefit plan is subject to the Form M–1 filing requirements, and if so, whether the plan is currently in compliance with the Form M–1 filing requirements under § 2520.101–2. Plan administrators that indicate the plan is subject to the Form M–1 filing requirements also would be required to enter the Receipt Confirmation Code for the Form M–1 annual report or the most recent Form M–1 required to be filed with the Department. Failure to answer the Form M–1 compliance questions will result in rejection of the Form 5500 Annual Return/Report as incomplete and civil penalties may be assessed pursuant to ERISA section 502(c)(2). The Department believes that the burden associated with this revision would be de minimis because plan administrators would know whether the plan is subject to and in compliance with the Form M–1 filing requirements, and they would have the Receipt Confirmation Code for the Form M–1 filing readily available.

The regulations also amend § 2520.104–20 to expressly provide that the exemption from filing the Form 5500 is not available for small plans required to file the Form M–1. Following the methodology used to calculate the burden in the Form 5500 regulations, the Department estimates that for small plans that meet the requirements of § 2520.104–44, filing a Form 5500 and completing Schedule A and Part III of Schedule G would cause them to incur an annual cost of $450 to engage a third-party service provider to prepare the form and schedules for submission. The Department does not have sufficient data to determine the number of small plan MEWAs and ECEs that would be required to file the Form 5500 under the final rules, but believes that the number of such plans would be small, because 90 percent of the entities that file Form M–1 with the Department cover more than 100 participants.

2. Cost to the Government

The Department estimates that the cost to the Federal government to process Form M–1s is approximately $7,200. This includes the cost to process online submissions and maintain the processing system, and was estimated by the offices within EBSA that are responsible for overseeing these activities.

TABLE 4—COST OF FEDERAL GOVERNMENT OF FORM M–1

| Processing of M1 Forms | |
|---|---|
| Online | $2,200 |
| Maintenance of System | 5,000 |
| Total | 7,200 |

These paperwork burden estimates are summarized as follows:

*Type of Review:* Revised collection.

*Agency:* Employee Benefits Security Administration, Department of Labor.

*Title:* MEWA Form M–1

*OMB Control Number:* 1210–0116

*Affected Public:* Business or other for-profit; not-for-profit institutions.

*Estimated Number of Respondents:* 484 (first year); 484 (three-year average).

*Estimated Number of Responses:* 484 (first year); 484 (three-year average).

*Frequency of Response:* Annually.

*Estimated Annual Burden Hours:* 188 (first year); 130 (three-year average).

*Estimated Annual Burden Cost:* $119,500 (first year); $92,000 (three-year average).

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 et seq.) and are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions. In accordance with the RFA, the Department prepared an initial regulatory flexibility analysis at the proposed rule stage and requested comments on the analysis. No comments were received. Below is the Department's final regulatory flexibility analysis and its certification that these final regulations do not have a significant economic impact on a substantial number of small entities.

The Department does not have data regarding the total number of MEWAs and ECEs that currently exist. The best

information the Department has to estimate the number of MEWAs and ECEs is based on filings of the Form M–1, which MEWAs and certain collectively bargained arrangements have filed annually with the Department. Just over 436 entities filed the Form M–1 with the Department in 2010, the latest year for which data is available.

The Small Business Administration uses a size standard of less than $7 million in average annual receipts as the cut off for small business in the finance and insurance sector.[28] While the Department does not collect revenue information on the Form M–1, it does collect data regarding the number of participants covered by MEWAs and ECEs that file Form M–1 and can use participant data and average premium data to determine the number of MEWAs and ECEs that are small entities, because their revenues do not exceed the $7 million threshold. For 2009, the average single coverage annual premium was $4,717 and the average annual family coverage premium was $12,696.[29] Combining these premium estimates with estimates of the ratio of policies to the covered population from the Current Population Survey at employers with less than 500 workers (0.309 for single coverage and 0.217 for family coverage), the Department estimates that 62 percent of entities filing Form M–1 (258 entities) are small entities.

While this number is a relatively large fraction of all entities, it is about 7 percent when expressed as a fraction of all participants covered by MEWAs and ECEs. In addition, the Department notes that the reporting burden that would be imposed on all MEWAs and ECEs by the rule is estimated as an average cost of $284 for each entity filing Form M–1. For all but the smallest MEWAs or ECEs (less than 15 participants), this represents less than one-half of one percent of revenues.

The regulations also amend § 2520.104–20 to expressly provide that the limited exemption from filing the Form 5500 for certain unfunded and insured small welfare plans is not available for plans required to file the Form M–1. As discussed in the PRA section above, the Department estimates that these small plan MEWAs and ECEs would incur an annual cost of $450 to engage a third-party service provider to prepare the form and schedules for submission. Any burden for small ECEs is even less because these plans are subject to the Form M–1 filing requirements only for limited periods. The Department does not have sufficient data to determine the number of small plan MEWAs and ECEs that would be required to file the Form 5500 under the final rules. About 10 percent (48) of MEWAs and ECEs filing the Form M–1 in 2010 had less than 100 participants. However, the 2010 Form M–1 lacks information on the source of funding to determine which of these small MEWAs and ECEs would be ERISA-covered plans affected by the Final Rules.

Accordingly, the Department hereby certifies that this regulation does not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.), as well as Executive Order 12875, this rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

*E. Executive Order 13132*

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999) requires the Agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This regulation has federalism implications, because the States and the Federal government share dual jurisdiction over MEWAs that are employee benefit plans or hold plan assets. Generally, States are primarily responsible for overseeing the financial soundness and licensing of MEWAs under State insurance laws. The Department enforces ERISA's fiduciary responsibility provisions against MEWAs that are ERISA plans or hold plan assets.

Over the years, the Department and State insurance departments have worked closely and coordinated their investigations and other actions against fraudulent and abusive MEWAs. For example, EBSA regional offices have met with State officials in their regions and supported their enforcement efforts to shut down fraudulent and abusive MEWAs. States have often lobbied for stronger Federal enforcement tools to help combat fraudulent and insolvent MEWAs. By requiring MEWAs to register with the Department before operating in a State by filing the Form M–1 and to provide additional information, these final rules respond to the States' concern and enhance the State and Federal governments' joint mission to take enforcement action against fraudulent and abusive MEWAs and limit the losses suffered by American workers, their families, and businesses when abusive MEWAs become insolvent and fail to reimburse medical claims.

**List of Subjects in 29 CFR Part 2520**

Accounting, Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as follows:

**PART 2520—[AMENDED]**

■ 1. The authority citation for part 2520 is revised to read as follows:

**Authority:** 29 U.S.C. 1021–1024, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1181–1183, 1181 note, 1185, 1185a–d, and 1191–1191c. Sec. 2520.103–1 also issued under 26 U.S.C. 6058 note. Sec. 2520.101–6 also issued under 29 U.S.C. 1021(k); Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–d, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788;

■ 2. Section 2520.101–2 is revised to read as follows:

**§ 2520.101–2 Filing by multiple employer welfare arrangements and certain other related entities.**

(a) *Basis and scope.* Section 101(g) of the Employee Retirement Income Security Act (ERISA), as amended by the Patient Protection and Affordable Care Act, requires the Secretary of Labor (the Secretary) to establish, by regulation, a requirement that multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (as described in paragraph (b)(6) of this section), which are not group health plans, to register with the Secretary prior to operating in a State. Section 101(g) also permits the

[28] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*

[29] Kaiser Family Foundation and Health Research Educational Trust, ''Employer Health Benefits, 2009 Annual Survey.'' The reported numbers are from Exhibit 1.2 and are for the category Annual, all Small Firms (3–199 workers).

Secretary to require, by regulation, such MEWAs to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA (part 7) are being carried out in connection with such benefits. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7. This section sets out requirements for reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to in this section as Entities Claiming Exception or ECEs). The reporting requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

(1) *Administrator* means—(i) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(ii) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA); or

(iii) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, jointly and severally, the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

(2) *Entity Claiming Exception (ECE)* means an entity that claims it is not a MEWA on the basis that the entity is established or maintained pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements within the meaning of section 3(40)(A)(i) of ERISA and § 2510.3–40.

(3) *Excepted benefits* means *excepted benefits* within the meaning of section 733(c) of ERISA and § 2590.701–2 of this chapter.

(4) *Group health plan* means a *group health plan* within the meaning of section 733(a) of ERISA and § 2590.701–2 of this chapter.

(5) *Health insurance issuer* means a *health insurance issuer* within the meaning of section 733(b)(2) of ERISA and § 2590.701–2 of this chapter.

(6) *Medical care* means *medical care* within the meaning of section 733(a)(2) of ERISA and § 2590.701–2 of this chapter.

(7) *Multiple employer welfare arrangement (MEWA)* means a *multiple employer welfare arrangement* within the meaning of section 3(40) of ERISA.

(8) *Operating* means any activity including but not limited to marketing, soliciting, providing, or offering to provide benefits consisting of *medical care.*

(9) *Origination* means, with regard to an ECE, the occurrence of any of the following events (an ECE is considered to have been *originated* only when an event described below occurs)—

(i) The ECE begins operating with regard to the employees of two or more employers (including one or more self-employed individuals);

(ii) The ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated at least three years prior to the merger); or

(iii) The number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger).

(10) *Reporting or to report* means to file the Form M–1 as required pursuant to sections 101(g) of ERISA; § 2520.101–2; or the instructions to the Form M–1.

(11) *Special filing event* means, with regard to an ECE—

(i) The ECE begins knowingly operating in any additional State or States that were not indicated on a previous report filed pursuant to paragraph (e)(1)(i) or (f)(2)(i) of this section; or

(ii) The ECE experiences a material change as defined in the Form M–1 instructions.

(12) *State* means *State* within the meaning of § 2590.701–2 of this chapter.

(c) *Persons required to report*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section:

(i) The administrator of a MEWA regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE during the three-year period following an event described in paragraph (b)(9) of this section.

(2) *Exceptions*—(i) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE described under this paragraph (c)(2)(i).

(A) A MEWA or ECE licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees;

(B) A MEWA or ECE that provides coverage that consists solely of excepted benefits, which are not subject to ERISA part 7. If the MEWA or ECE provides coverage that consists of both excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to report under this section;

(C) A MEWA or ECE that is a group health plan not subject to ERISA, including a governmental plan, church plan, or a plan maintained solely for the purpose of complying with workmen's compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively; or

(D) A MEWA or ECE that provides coverage only through group health plans that are not covered by ERISA, including governmental plans, church plans, or plans maintained solely for the purpose of complying with workmen's compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively (or other arrangements not covered by ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage).

(ii) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of an entity that would not constitute a MEWA or ECE *but for* the following circumstances under this paragraph (c)(2)(ii).

(A) The entity provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles of section 414(c) of the Internal Revenue Code;

(B) The entity provides coverage to the employees of two or more employers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M–1 filing and is temporary in nature. For purposes of this paragraph, ''temporary'' means the MEWA or ECE does not extend beyond the end of the plan year following the plan year in which the change in control occurs; or

(C) The entity provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor, such as non-employee members of the board of directors or independent contractors, and the number of such persons who are not employees or former employees does not exceed one percent of the total number of employees or former employees covered under the arrangement, determined as of the last day of the year to be reported or, determined as of the 60th day following the date the MEWA or ECE began operating in a manner such that a filing is required pursuant to paragraph (e)(1)(i), (2), or (3) of this section.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

*Example 1.* (i) *Facts.* MEWA *A* begins operating by offering coverage to the employees of two or more employers on August 1, 2013. MEWA *A* is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

(ii) *Conclusion.* In this *Example 1,* the administrator of MEWA *A* is not required to report via Form M–1. MEWA *A* meets the exception to the filing requirement in paragraph (c)(2)(i)(A) of this section because it is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

*Example 2.* (i) *Facts.* Company *B* maintains a group health plan that provides benefits for medical care for its employees (and their dependents). Company *B* establishes a joint venture in which it has a 25 percent stock ownership interest, determined by applying the principles similar to the principles under section 414(c) of the Internal Revenue Code, and transfers some of its employees to the joint venture. Company *B* continues to cover these transferred employees under its group health plan.

(ii) *Conclusion.* In this *Example 2,* the administrator is not required to file the Form M–1 because Company *B's* group health plan meets the exception to the filing requirement in paragraph (c)(2)(ii)(A) of this section. This is because Company *B's* group health plan would not constitute a MEWA but for the fact that it provides coverage to two or more trades or businesses that share a common control interest of at least 25 percent.

*Example 3.* (i) *Facts.* Company *C* maintains a group health plan that provides benefits for medical care for its employees. The plan year of Company *C's* group health plan is the fiscal year for Company *C,* which is October 1st—September 30th. Therefore, October 1, 2012—September 30, 2013 is the 2013 plan year. Company *C* decides to sell a portion of its business, Division *Z,* to Company *D.* Company *C* signs an agreement with Company *D* under which Division *Z* will be transferred to Company *D,* effective September 30, 2013. The change in control of Division *Z* therefore occurs on September 30, 2013. Under the terms of the agreement, Company *C* agrees to continue covering all of the employees that formerly worked for Division *Z* under its group health plan until Company *D* has established a new group health plan to cover these employees. Under the terms of the agreement, it is anticipated that Company *C* will not be required to cover the employees of Division *Z* under its group health plan beyond the end of the 2014 plan year, which is the plan year following the plan year in which the change in control of Division *Z* occurred.

(ii) *Conclusion.* In this *Example 3,* the administrator of Company *C's* group health plan is not required to report via the Form M–1 on March 1, 2014 for fiscal year 2013 because it is subject to the exception to the filing requirement in paragraph (c)(2)(ii)(B) of this section for an entity that would not constitute a MEWA but for the fact that it is created by a change in control of businesses that occurs for a purpose other than to avoid filing the Form M–1 and is temporary in nature. Under the exception, ''temporary'' means the MEWA does not extend beyond the end of the plan year following the plan year in which the change in control occurs. The administrator is not required to file the 2013 Form M–1 annual report because it is anticipated that Company *C* will not be required to cover the employees of Division *Z* under its group health plan beyond the end of the 2014 plan year, which is the plan year following the plan year in which the change in control of businesses occurred.

*Example 4.* (i) *Facts.* Company *E* maintains a group health plan that provides benefits for medical care for its employees (and their dependents) as well as certain independent contractors who are self-employed individuals. The plan is therefore a MEWA. The administrator of Company *E's* group health plan uses calendar year data to report for purposes of the Form M–1. The administrator of Company *E's* group health plan determines that the number of independent contractors covered under the group health plan as of the last day of calendar year 2013 is less than one percent of the total number of employees and former employees covered under the plan determined as of the last day of calendar year 2013.

(ii) *Conclusion.* In this *Example 4,* the administrator of Company *E's* group health plan is not required to report via the Form M–1 for calendar year 2013 (a filing that is otherwise due by March 1, 2014) because it is subject to the exception to the filing requirement provided in paragraph (c)(2)(ii)(C) of this section for entities that cover a very small number of persons who are not employees or former employees of the plan sponsor.

(d) *Information to be reported*—(1) Any reporting required by this section shall consist of a completed copy of the Form M–1 Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) (Form M–1) and any additional statements required pursuant to the instructions for the Form M–1.

(2) *Rejected filings.*—The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with § 2560.502c–5 of this chapter.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of ERISA and § 2560.502c–5 of this chapter).

(e) *Origination, registration, and other non-annual reporting requirements and timing*—(1) *General rule for ECEs*—(i) Except as provided in paragraph (e)(1)(ii) of this section, and subject to the limitations established by paragraph (c)(1)(ii) of this section, when an ECE experiences an event described in paragraphs (b)(9) or (b)(11) of this section, the administrator of the ECE shall file Form M–1 by the 30th day following the date of the event.

(ii) *Exception.* Paragraph (e)(1)(i) of this section does not apply to ECEs that experience an origination as described in paragraph (b)(9)(i) of this section. Such entities are required, subject to the limitations established by paragraph (c)(1)(ii) of this section, to file the Form M–1 30 days prior to the date of the event.

(2) *General rule for MEWAs*—(i) *In general.* Except as provided in paragraph (e)(2)(ii) of this section, the administrator of the MEWA is required to register with the Secretary by filing the Form M–1 30 days prior to operating in any State.

(ii) *Exception.* Paragraph (e)(2)(i) of this section does not apply to MEWAs that, prior to the effective date of this section, were already in operation in a State (or States). Such entities are required to submit an annual filing pursuant to annual reporting rules described in paragraph (f)(2)(i) of this section for that State (or those States).

(3) *Special rule requiring MEWAs to make additional filings.* Subsequent to registering with the Secretary pursuant to paragraph (e)(2)(i) of this section, the administrator of a MEWA shall file the Form M–1:

(i) Within 30 days of knowingly operating in any additional State or States that were not indicated on a previous report filed pursuant to paragraph (e)(2)(i) or (f)(2)(i) of this section;

(ii) Within 30 days of the MEWA operating with regard to the employees of an additional employer (or employers, including one or more self-

employed individuals) after a merger with another MEWA;

(iii) Within 30 days of the date the number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar year; or

(iv) Within 30 days of experiencing a material change as defined in the Form M–1 instructions.

(4) *Anti-abuse rule.* If a MEWA or ECE neither offers nor provides benefits consisting of medical care within a State during the calendar year immediately following the year in which a filing is made by the ECE pursuant to paragraph (e)(1) of this section (due to an event described in paragraph (b)(9)(i) or (b)(11)(i) of this section) or a filing is made by the MEWA pursuant to paragraph (e)(2) or (3) of this section, with respect to operating in such State, such filing will be considered to have lapsed.

(5) *Multiple filings not required in certain circumstances.* If multiple filings are required under this paragraph (e), a single filing will satisfy this section so long as the filing is timely for each required filing.

(6) *Extensions.* (i) An extension may be granted for filing a report required by paragraph (e)(1), (2), or (3) of this section if the administrator complies with the extension procedure prescribed in the instructions to the Form M–1.

(ii) If the filing deadline set forth in this paragraph (e) is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(f) *Annual reporting requirements and timing*—(1) *Period for which reporting is required.* A completed copy of the Form M–1 is required to be filed for each calendar year during all or part of which the MEWA is operating and for each of the three calendar years following an origination during all or part of which the ECE is operating.

(2) *Filing deadline*—(i) *General March 1 filing due date for annual filings.* Except as provided in paragraph (f)(2)(ii) of this section, a completed copy of the Form M–1 is required to be filed on or before each March 1 that follows a period for which reporting is required (as described in paragraph (f)(1) of this section).

(ii) *Exception.* Paragraph (f)(2)(i) of this section does not apply to ECEs and MEWAs if, between October 1 and December 31, the entity is required to make a filing pursuant to paragraph (e)(1), (2), or (3) of this section and makes that filing timely.

(3) *Extensions.* (i) An extension may be granted for filing a report required by paragraph (f)(2)(i) of this section if the administrator complies with the extension procedure prescribed in the instructions to the Form M–1.

(ii) If the filing deadline set forth in this paragraph (f) is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(4) *Examples.* The rules of paragraphs (e) and (f) of this section are illustrated by the following examples:

*Example 1.* (i) *Facts.* MEWA *A* began offering coverage for medical care to the employees of two or more employers on July 1, 2003 (and continues to offer such coverage). MEWA *A* has satisfied all filing requirements to date.

(ii) *Conclusion.* In this *Example 1,* the administrator of MEWA *A* must continue to file a timely completed Form M–1 annual report each year, but the administrator is not required to register with the Secretary because MEWA *A* meets the exception to the registration requirement in paragraph (e)(2)(ii) of this section and has not experienced any event described in paragraph (e)(3) that would require registering with the Secretary.

*Example 2.* (i) *Facts.* On August 25, 2013, MEWA *B* is operating in State *P* and has made all appropriate filings related to those operations. On December 22, 2013 one of the employers that participates in MEWA *B* is awarded a new contract in State *Q.* The employer adds an office in State *Q* and the employees there are eligible to access its group health plan.

(ii) *Conclusion.* In this *Example 2,* the administrator of MEWA *B* must report the addition of State *Q* by filing the Form M–1 within 30 days *of knowing that it is operating in State* Q.

*Example 3.* (i) *Facts.* As of July 1, 2013, MEWA *C* is preparing to operate in States *Y* and *Z.* MEWA *C* is not licensed or authorized to operate as a health insurance issuer in any State and does not meet any of the other exceptions set forth in paragraph (c)(2) of this section.

(ii) *Conclusion.* In this *Example 3,* the administrator of MEWA *C* is required to register with the Secretary by filing a completed Form M–1 30 days prior to operating in States *Y* or *Z.* The administrator of MEWA *C* must also report by filing the Form M–1 annually by every March 1 thereafter.

*Example 4.* (i) *Facts.* As of July 28, 2013, MEWA *D* is operating in States *V* and *W.* MEWA *D* has satisfied the requirements of (e)(2) and, if applicable, (e)(3) with respect to those States. MEWA *D* is not licensed or authorized to operate as a health insurance issuer in any State and does not meet any of the other exceptions set forth in (c)(2) of this section. On August 5, 2013 MEWA *D* knowingly begins operating in State *X.*

(ii) *Conclusion.* In this *Example 4,* the administrator of MEWA *D* is required to make an additional registration filing with the Secretary by September 4, 2013 (within 30 days of knowingly operating in State *X*). Additionally, the administrator of MEWA *D* must continue to file the Form M–1 annually by every March 1 thereafter.

*Example 5.* (i) *Facts.* ECE *A* began offering coverage for medical care to the employees of two or more employers on January 1, 2007 and ECE *A* has not been involved in any mergers or experienced any other origination as described in paragraph (b)(9) of this section.

(ii) *Conclusion.* In this *Example 5,* ECE *A* was originated on January 1, 2007 and has not been originated since then. Therefore, the administrator of ECE *A* is not required to file a 2012 Form M–1 because the last time the ECE *A* was originated was January 1, 2007 which is more than three years prior. Further, the ECE has satisfied its reporting requirements by making three timely annual filings after its origination.

*Example 6.* (i) *Facts.* ECE *B* wants to begin offering coverage for medical care to the employees of two or more employers on July 1, 2013.

(ii) *Conclusion.* In this *Example 6,* the administrator of ECE *B* must file a completed Form M–1 on or before June 1, 2013 (which is 30 days prior to the origination date). In addition, the administrator of ECE *B* must file an updated copy of the Form M–1 by March 1, 2014 because the last date ECE *B* was originated was July 1, 2013 (which is less than three years prior to the March 1, 2014 due date). Furthermore, the administrator of ECE *B* must file the Form M–1 by March 1, 2015 and again by March 1, 2016 (because July 1, 2013 is less than three years prior to March 1, 2015 and March 1, 2016, respectively). However, if ECE *B* is not involved in any mergers and does not experience any other origination as described in paragraph (b)(9) of this section, there would not be a new origination date and no Form M–1 is required to be filed after March 1, 2016.

*Example 7.* (i) *Facts.* ECE *D,* which currently operates in State *A* and is still within the three-year window following its origination and the timely filing related thereto, is making preparations to operate in State *B* beginning on November 1, 2013.

(ii) *Conclusion.* In this *Example 7,* by operating in State *B,* ECE *D* experiences a special event within the three-year window following its origination and must make a filing by December 2, 2013.

*Example 8.* (i) *Facts.* Same facts as *Example 7.* ECE *D* satisfied its special filing requirement but is unsure about its annual filing requirements.

(ii) *Conclusion.* ECE *D* is exempt from the next annual filing due March 1, 2014 pursuant to the filing deadline exception under (f)(2)(ii) of this section. However, ECE *D* must continue making annual filings for the remainder of the three years following its origination.

*Example 9.* (i) *Facts.* MEWA *E* begins distributing marketing materials on August 31, 2013.

(ii) *Conclusion.* In this *Example 8,* because MEWA *E* began operating on August 31, 2013, the administrator of MEWA *E* must register with the Secretary by filing a completed Form M–1 on or before August 1, 2013 (30 days prior to operating in any State). In addition, the administrator of MEWA *E* must file the Form M–1 annually by every March 1 thereafter.

*Example 10.* (i) *Facts.* Same facts as *Example 9,* but MEWA *E* registers on or before August 1, 2013 by filing a Form M–1 indicating it will begin operating in every State. However, in the calendar year immediately following the filing, MEWA *E* only offered or provided benefits consisting of medical care to participants in State *Z.*

(ii) *Conclusion.* In this Example 10, the registration for all States (other than State Z) have lapsed under (e)(4) because MEWA *E* only offered or provided benefits consisting of medical care to participants in State *Z* in the calendar year immediately following the filing. If subsequently, MEWA *E* begins offering or providing benefits consisting of medical care to participants in any additional State (or States), it must make a new registration filing pursuant to (e)(3) of this section.

(g) *Electronic filing.* A completed Form M–1 is filed with the Secretary by submitting it electronically as prescribed in the instructions to the Form M–1.

(h) *Penalties*—(1) *Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of ERISA for persons who fail to file the information required under this section, see § 2560.502c–5 of this chapter. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of ERISA, see §§ 2570.90 through 2570.101 of this chapter.

(2) *Criminal penalties and procedures.* For information on criminal penalties under section 519 of ERISA for persons who knowingly make false statements or false representation of fact with regards to the information required under this section, see section 501(b) of ERISA.

(3) *Cease and desist and summary seizure orders.* For information on the Secretary's authority to issue a cease and desist or summary seizure order under section 521 of ERISA, see § 2560.521.

■ 3. Section 2520.103–1 is amended by:

■ a. Revising paragraphs (a) introductory text, (b) introductory text and (c)(1),

■ b. Amending paragraph (c)(2)(ii)(C) by removing the reference ''and'' at the end of the paragraph,

■ c. Removing the period at the end of paragraph (c)(2)(ii)(D) and adding the reference ''; and'' at the end of the paragraph,

■ d. Adding a new paragraph (c)(2)(ii)(E),

■ e. Redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f).

The revisions and additions read as follows:

**§ 2520.103–1 Contents of the annual report.**

(a) *In general.* The administrator of a plan required to file an annual report in accordance with section 104(a)(1) of the Act shall include with the annual report the information prescribed in paragraph (a)(1) of this section or in the simplified report, limited exemption or alternative method of compliance described in paragraph (a)(2) of this section.

* * * * *

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.* Except as provided in paragraph (d) and paragraph (f) of this section and in §§ 2520.103–2 and 2520.104–44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section shall include:

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2), paragraph (d) and paragraph (f) of this section, and in §§ 2520.104–43, 2520.104a–6, and 2520.104–44, the annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 ''Annual Return/Report of Employee Benefit Plan'' and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

(2) * * *

(ii) * * *

(E) Is not a plan subject to the Form M–1 requirements under § 2520.101–2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities).

* * * * *

(f) *Plans subject to the Form M–1 filing requirements under § 2520.101–2.* The annual report of an employee welfare benefit plan that is subject to the Form M–1 requirements under § 2520.101–2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities) during the plan year shall also include any statements or information required by the instructions to the Form 5500 relating to compliance with the Form M–1 filing requirements under § 2520.101–2.

* * * * *

■ 4. Section 2520.104–20 is amended by removing the reference ''and'' in paragraph (b)(2)(iii), removing the period at the end of paragraph (b)(3)(ii) and adding the reference ''; and'' in its place, and adding a new paragraph (b)(4) to read as follows:

**§ 2520.104–20 Limited exemption for certain small welfare plans.**

* * * * *

(b) * * *

(4) Which are not subject to the Form M–1 requirements under § 2520.101–2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities).

* * * * *

■ 5. In § 2520.104–41, revise paragraph (c) to read as follows:

**§ 2520.104–41 Simplified annual reporting requirements for plans with fewer than 100 participants.**

* * * * *

(c) *Contents.* The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section shall file, in the manner described in § 2520.104a–5, a completed Form 5500 ''Annual Return/Report of Employee Benefit Plan'' including, if applicable, the information described in § 2520.103–1(f) or, to the extent eligible, a completed Form 5500–SF ''Short Form Annual Return/Report of Small Employee Benefit Plan,'' and any required schedules or statements prescribed by the instructions to the applicable form, and, unless waived by § 2520.104–44 or § 2520.104–46, a report of an independent qualified public accountant meeting the requirements of § 2520.103–1(b).

Signed this 26th day of February, 2013.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. 2013–04863 Filed 2–28–13; 8:45 am]

**BILLING CODE 4510–29–P**

**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**29 CFR Parts 2560 and 2571**

**RIN 1210–AB48**

## Ex Parte Cease and Desist and Summary Seizure Orders—Multiple Employer Welfare Arrangements

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Final rules.

**SUMMARY:** This document contains two final rules under the Employee Retirement Income Security Act of 1974 (ERISA) to facilitate implementation of new enforcement authority provided to the Secretary of Labor by the Patient Protection and Affordable Care Act (Affordable Care Act). The Affordable Care Act authorizes the Secretary to issue a cease and desist order, ex parte (i.e. without prior notice or hearing), when it appears that the alleged conduct of a multiple employer welfare arrangement (MEWA) is fraudulent, creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. The Secretary may also issue a summary seizure order when it appears that a MEWA is in a financially hazardous condition. The first regulation establishes the procedures for the Secretary to issue ex parte cease and desist orders and summary seizure orders with respect to fraudulent or insolvent MEWAs. The second regulation establishes the procedures for use by administrative law judges and the Secretary when a MEWA or other person challenges a temporary cease and desist order.

**DATES:** *Effective date.* These final regulations are effective April 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Lewis, Plan Benefits Security Division, Office of the Solicitor, Department of Labor, at (202) 693–5588 or Suzanne Bach, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*A. Purpose of the Regulatory Action*

1. Need for Regulatory Action

The Patient Protection and Affordable Care Act (Affordable Care Act) gives the Secretary authority to issue a cease and desist order when a multiple employer welfare arrangement (MEWA) engages in conduct that is fraudulent, creates an immediate danger to the public safety or welfare, or causes or can be reasonably expected to cause significant, immediate, and irreparable injury. The act also gives the Secretary authority to issue a summary seizure order when a MEWA is in a financially hazardous condition. These new powers strengthen the Secretary's ability to protect plan participants, beneficiaries, employers, employee organizations, and other members of the public from fraudulent, abusive, and financially unstable MEWAs.

These two regulations are necessary to set forth the criteria for determining whether the statutory grounds for issuing an order have been met, and, in the case of a cease and desist order, to establish reasonable administrative review procedures. The Secretary will generally obtain judicial authorization before issuing a summary seizure order. The substantive criteria for issuing an order are based on several decades of enforcement experience by the Department and the States regarding fraudulent or financially hazardous conduct of MEWAs (and persons acting as their agents and employees). The administrative procedures will allow affected persons to challenge a cease and desist order and obtain expeditious review, including the right to a hearing.

2. Legal Authority

Section 521 of ERISA, 29 U.S.C. 1151, sets out the Secretary's authority to issue cease and desist orders and summary seizure orders. Section 521(f) provides that ''the Secretary may promulgate such regulations or other guidance as may be necessary or appropriate to carry out'' this new enforcement authority. Section 505 of ERISA, 29 U.S.C. 1135, also provides the Secretary with authority to prescribe such regulations as necessary or appropriate to carry out the provisions of Title I of ERISA, which includes the new section 521.

*B. Summary of the Major Provisions of This Regulatory Action*

These rules generally set forth the statutory criteria under which the Secretary may issue cease and desist orders and summary seizure orders. They also specify that orders may apply to MEWAs and to persons having custody or control of assets of a MEWA, any authority over management of a MEWA, or any role in the transaction of a MEWA's business. Paragraph (b) of this section contains key definitions. Most notably, this paragraph sets forth the criteria for determining if it appears that the MEWA or any person acting as an agent or employee of the MEWA has engaged in conduct that would support issuance of an order under the statute. The regulations address the scope of the cease and desist order and the process for a person who is the subject of a temporary cease and desist order to request an administrative hearing to show cause why the order should be modified or set aside. The regulations also establish the procedures for such hearings.

Although the Secretary may issue a cease and desist order without first seeking court approval, the procedure for a summary seizure order is somewhat different. The regulations generally require that the Secretary obtain judicial authorization before issuing a summary seizure order. They also require that the Secretary seek court appointment of a receiver or independent fiduciary and obtain court authorization for other actions to assert control over the MEWA's and plan assets.

Orders issued under these final rules are effective upon service and remain in effect until modified or set aside by the Secretary, an administrative law judge, or a reviewing court. Issued final orders will be made available to the public as will modifications and terminations of such final orders. Further, to facilitate coordination with the States, Federal agencies, and foreign authorities, the Secretary may disclose the issuance of any order (whether temporary or final) and any information and evidence of any proceedings and hearings related to the order to other Federal, State, or foreign authorities. (The sharing of such information, however, does not constitute a waiver of any applicable privilege or claim of confidentiality.)

The Secretary remains committed to helping MEWAs and plan officials comply with legal requirements and serve plan participants and beneficiaries properly. These new enforcement tools will enhance the Department's ability to protect plan participants and beneficiaries when MEWAs and plan actors fail to comply with their obligations. The Secretary will also continue to use any other investigatory and enforcement tools available under title I of ERISA.

*C. Costs and Benefits*

These final regulations will improve MEWA compliance and deter abusive practices. They will also enable the Secretary to take enforcement action against fraudulent, abusive, and financially unstable MEWAs more effectively. The Department's primary judicial remedy for violations of ERISA

by MEWAs is court-ordered relief based on a breach of fiduciary duty. Gathering sufficient evidence to prove a fiduciary breach may be very time-consuming and labor intensive, even where it is clear that the MEWA is insolvent or unable to meet its financial commitments. In many MEWA cases, important financial records are poor or non-existent. The new authority implemented by these regulations provides an additional, more flexible tool for the Secretary to use, when appropriate, to combat fraudulent and abusive conduct by MEWAs and financially hazardous arrangements. Moreover, these regulations will enable the enforcement process to be more efficient because the subject of a cease and desist order can seek review of the order in an administrative hearing rather than a court. Since the rules do not require any action or impose any requirements on MEWAs, these regulations do not impose any major costs.

## II. Background

Multiple employer welfare arrangements (MEWAs) [1] that are properly operated provide an additional option for small employers seeking affordable health coverage for their employees. Nevertheless, fraudulent and abusive practices and financial instability are recurrent themes in ERISA enforcement.[2] Congress enacted section 6605 of the Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, 124 Stat. 119, 780 (2010), which adds section 521 to ERISA, to give the Secretary of Labor additional enforcement authority to protect plan participants, beneficiaries, employees or employee organizations, or other members of the public against fraudulent, abusive, or financially hazardous MEWAs.

This section authorizes the Secretary to issue ex parte cease and desist orders when it appears to the Secretary that the alleged conduct of a MEWA is ''fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.'' 29 U.S.C. 1151(a). A person that is adversely affected by the issuance of a cease and desist order may request an administrative hearing regarding the order. 29 U.S.C. 1151(b). This section also allows the Secretary to issue an order to seize the assets of a MEWA that the Secretary determines to be in a financially hazardous condition. 29 U.S.C. 1151(e).

On December 6, 2011, the Department published in the **Federal Register** proposed regulations (76 FR 76235) implementing new ERISA section 521 and setting forth the procedures for administrative hearings on the issuance of an ex parte cease and desist order. The Department received three (3) comment letters on these proposed rules. After consideration of the comments received, the Department is publishing these final regulations with little modification of the proposed rules.

## III. Overview of the Final Regulations

### *A. Ex Parte Cease and Desist and Summary Seizure Order Regulations (29 CFR 2560.521)*

#### Purpose and Definitions

Pursuant to section 6605 of the Affordable Care Act, these rules set forth criteria and procedures for the Secretary to issue cease and desist orders and summary seizure orders and procedures for administrative review of the cease and desist orders. The rules apply to any cease and desist order and any summary seizure order issued under section 521 of ERISA. Paragraph (a) of section 2560.521–1 of the rules generally sets forth the statutory criteria under which the Secretary may issue orders. It also specifies that orders may apply to MEWAs and to persons having custody or control of assets of a MEWA, any authority over management of a MEWA, or any role in the transaction of a MEWA's business.

One commenter expressed concern that applying cease and desist and summary seizure orders to third party administrators (TPAs) would threaten their ability to perform their services, which may include helping MEWAs recover when they are in financial peril. TPAs perform critical services for the plan community. As the commenter notes, an important service TPAs do or can provide is to educate MEWAs about their duty to pay claims and provide promised benefits. TPAs also play an important role in informing the Department about MEWAs that ask them to deceive or defraud plan participants. The Department recognizes the role that conscientious and knowledgeable TPAs and other service providers may play in protecting plans and their participants and beneficiaries. Where the functions of a service provider are essential to the operation of a MEWA, cease and desist orders will need to cover these functions, whether or not the service provider engaged in conduct giving rise to the order. Moreover, in some cases a service provider may be integrally involved in conduct evidencing an intent to deceive or defraud plans and their participants and beneficiaries or other actions that endanger the public welfare. As an example, in *U.S.* v. *William Madison Worthy,* No. 7:11–cr–00487–HMH (D. S.C. 2011), Mr. Worthy, who owned the TPA providing services to the MEWA, pleaded guilty for diverting almost $1 million in premium contributions for coverage provided in connection with the MEWA. Ultimately, about $1.7 million in claims either went unpaid or had to be paid by plan members.

Moreover, it should be emphasized that orders may often be issued to persons, who were not involved in improper conduct, but whose cooperation is necessary to carry out the purpose of the order. For instance, a bank holding assets of a MEWA may receive a court-approved summary seizure order that directs the bank to freeze those assets. See, e.g., 29 CFR 2560.521–1(f)(4).

Paragraph (b) contains key definitions. ERISA section 521 applies the Secretary's cease and desist and seizure order authority to MEWAs, as defined under section 3(40) of ERISA, 29 U.S.C. 1002(40). As stated in the proposed regulations, Congress did not limit the Secretary's authority to issue orders to MEWAs that are ERISA-covered employee welfare benefits plans (ERISA-covered plans). Section 521 of ERISA also applies if the MEWA provides health coverage to one or more ERISA-covered plans, even if it also provides coverage to other persons unconnected to an ERISA-covered plan. These rules do not, however, apply to MEWAs that provide coverage only in connection with governmental plans, church plans, and plans maintained solely for the purpose of complying with workers' compensation laws, which are not covered by ERISA. They also do not apply to arrangements that only provide coverage to individuals other than in connection with an employee welfare benefit plan (e.g., individual market coverage). The proposed rules also noted that they did not apply to arrangements licensed or authorized to operate as a health insurance issuer. Though the Department has not changed the substance of the regulations in this regard, it has revised paragraph (b)(1) for the sake of clarity. The definition of a MEWA in ERISA section 3(40) is very broadly worded. Read literally, it could be interpreted to include traditional

[1] The term ''multiple employer welfare arrangement'' is defined at ERISA § 3(40), 29 U.S.C. 1002(40).

[2] See, e.g., *Chao* v. *Graf,* 2002 WL 1611122 (D. Nev. 2002), *In re Raymond Palombo, et al.,* 2011 WL 1871438 (Bankr. C.D. CA 2011) and *Solis* v. *Palombo,* No. 1:08–CV–2017 (N.D. Ga 2009); *Chao* v. *Crouse,* 346 F.Supp.2d 975 (S.D. Ind. 2004).

health insurance issuers (including health maintenance organizations) that are fully licensed (i.e., subject to stringent and comprehensive insurance regulation) to offer health insurance coverage to the public and employers at large in every State in which they offer health insurance coverage. The Department has never, however, applied ERISA's provisions on MEWAs to such organizations. These organizations do not pose the same level of risk for fraud, abuse, and financial instability that ERISA's provisions on MEWAs, including the new ERISA section 521 and these final rules, are designed to address. Consequently, these final rules do not apply to these entities. This exclusion applies to any arrangement that could fall within the definition of MEWA but is covered by the same level and scope of stringent and comprehensive insurance laws of a State (such as laws on licensure, solvency, reporting, anti-fraud, appeals, premium assessment, and guaranty funds) as traditional health insurance issuers (including health maintenance organizations) and that offers health insurance coverage to the public and employers at large.

ERISA section 514(b)(6) makes clear that the States can regulate any MEWA, even a MEWA that is an ERISA-covered plan. The Department retains shared jurisdiction with the States. In some States, some MEWAs are permitted to operate if they have obtained a limited license from the State (e.g. a license that, for instance, allows them to operate subject to lower requirements or less extensive examination and oversight and/or to offer and provide coverage to a limited population.). These arrangements remain subject to ERISA section 521 and these final rules.

One commenter encouraged the Department to focus its enforcement actions on abusive and fraudulent MEWAs that are self-funded or not fully insured (within the meaning of ERISA section 514(b)(6)(D)). The Department recognizes that fully insured MEWAs have raised fewer concerns than other MEWAs. Nevertheless, a fully insured MEWA that engages in the conduct meeting the statutory criteria could be subject to an order.

ERISA section 521 provides three statutory grounds upon which the Secretary may issue a cease and desist order. Paragraphs (b)(2)–(4) of the final regulations clarify the scope and meaning of the statutory language. The first statutory ground, fraudulent conduct, is described in paragraph (b)(2) of the final rules as an act or omission intended to deceive or defraud plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, the Secretary or a State about the MEWA's financial condition or regulatory status, benefits, management, control, or administration, and other aspects of its operation (e.g. claims review, marketing, etc.) that the Secretary determines are material.[3]

One commenter expressed concern about the definition of fraudulent conduct. In particular, the commenter was concerned that a focus on omissions regarding the financial condition of the MEWA, including the management of plan assets, could inadvertently target service providers that adjudicate or pay claims. The commenter also expressed concern that service providers would be adversely implicated simply because they interacted with the MEWA and others with respect to claims or marketing. The new enforcement tools under ERISA section 521 are designed to prevent or address serious harm to plan participants, plan beneficiaries, employers, employee organizations, and other members of the public. Fraudulent conduct, as defined in the proposed rules and under these final regulations, requires knowledge and intentionality or a reckless disregard on the part of the MEWA or agent or employee of the MEWA. As stated previously, however, even though an order is based on the conduct of a person other than the service provider, the service provider's activities may be affected simply because the order prohibits all or certain activities with respect to the MEWA, such as marketing, to continue.

The second ground for issuing a cease and desist order, conduct that creates an immediate danger to the public safety or welfare, is described in paragraph (b)(3) of the final rules. Conduct meets this standard if it impairs, or threatens to impair, the MEWA's ability to pay claims or otherwise unreasonably increases the risk of nonpayment of benefits. The third ground, conduct that causes or can be reasonably expected to cause significant, imminent, and irreparable injury, is described in paragraph (b)(4). Conduct meets this statutory standard if it has, or can be reasonably be expected to have, a significant and imminent negative effect that the Secretary reasonably believes will not be fully rectified on one or more of the following: (a) An employee welfare benefit plan that is, or offers benefits in connection with, a MEWA, (b) plan participants and plan beneficiaries, or (c) employers or employee organizations.

Paragraphs (b)(2)–(4) also provide examples of conduct that falls within those standards. A single act or omission within the categories of conduct set forth in the regulation may provide the basis for a cease and desist order. However, because the categories set forth in the statute are broad and overlapping, the examples may provide more than one basis for a cease and desist order.

The new ERISA section 521 also further expands the Secretary's enforcement options with respect to MEWAs by authorizing the Secretary to issue a summary seizure order to remove plan assets and other property from the management, control, or administration of a MEWA when it appears that the MEWA is in a financially hazardous condition. Under paragraph (b)(5) a MEWA is in a financially hazardous condition when the Secretary has probable cause to believe that a MEWA is, or is in imminent danger of becoming, unable to pay benefit claims as they become due, or that a MEWA has sustained, or is in imminent danger of sustaining, a significant loss of assets. Under the definition, a MEWA may also be in a financially hazardous condition if the Secretary has issued a cease and desist order to a person responsible for the management, control, or administration of the MEWA or plan assets associated with the MEWA.

Paragraph (b)(6) defines a person, for purposes of these regulations, to be an individual, partnership, corporation, employee welfare benefit plan, association, or other entity or organization. One commenter posited that the definition of person in the proposed rules was too broad because it reached service providers to MEWAs. The Department does not agree that the definition of person is overbroad. As discussed above, persons that provide services to MEWAs may engage in conduct that is grounds for the issuance of an order. Moreover, as previously noted, if a MEWA is being operated in a fraudulent or financially hazardous

[3] Similarly, section 519 of ERISA, 29 U.S.C. 1149, (also enacted as part of the Affordable Care Act) prohibits false statements and representations by any person, in connection with a MEWA's marketing or sales, concerning the financial condition or solvency of the MEWA, the benefits provided by the MEWA, and the regulatory status of the MEWA. Under ERISA section 501(b), 29 U.S.C. 1131(b), (as amended by the Affordable Care Act) criminal penalties may apply to a violation of ERISA section 519. Other criminal penalties may apply under other federal provisions as well. See e.g., 29 U.S.C. 1131(a) (willful violations of ERISA reporting and disclosure requirements), 18 U.S.C. 1001 (knowingly and willfully false statements to the U.S. government), and 18 U.S.C. 1027 (knowingly false statement or knowing concealment of facts in relation to documents required by ERISA).

manner, an order may need to apply to persons providing services to a MEWA in order to achieve its purpose. For example, it may be necessary for a cease and desist order to apply to an individual performing marketing services for a fraudulent MEWA even if the individual was not engaged in fraudulent conduct. In addition, the Department observes that the definition of person in ERISA section 3(9), while different from that in the proposed and these final rules, already encompasses service providers.

Cease and Desist Order

Paragraph (c) of § 2560.521–1 addresses the scope of the cease and desist order. This paragraph is structured the same as in the proposed rules. Paragraph (c)(2)(i) notes that the Secretary may enjoin a MEWA or person from the conduct that served as the basis for the order and from activities in furtherance of that conduct though a cease and desist order. In addition, the cease and desist order may provide broader relief as the Secretary determines is necessary and appropriate to protect the interests of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public. Paragraph (c)(2)(ii) provides that an order may prohibit a person from taking any specified actions with respect to, or exercising authority over, specified funds of any MEWA or of any welfare or pension plan. Paragraph (c)(2)(iii) provides that an order may also bar a person from acting as a service provider to MEWAs or plans. This provision allows the Secretary to issue an order preventing a person from, for example, performing any administrative, management, financial, or marketing services for any MEWA or any welfare or pension plan. A cease and desist order containing such a prohibition against transacting business with any MEWA or plan would prevent the MEWA or a person from avoiding the cease and desist order by shutting the MEWA down and re-establishing it in a new location or under a new identity. Such a prohibition may be necessary in cases of serious harmful conduct where it would be contrary to the interests of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public for a person whose conduct gave rise to the order to gain a position with other MEWAs or welfare or pension plans where they could repeat that conduct. The Department has added paragraph (c)(3) to clarify that it may require documentation from the subject of the order confirming compliance with the cease and desist order. Paragraph (d) of this section preserves the Secretary's existing ability to seek additional remedies under ERISA.

Under the new section 521(b) of ERISA, a person who is the subject of a temporary cease and desist order may request an administrative hearing to show cause why the order should be modified or set aside. Under the statute, the burden of proof rests with the person requesting the hearing. The process for the administrative hearing, set forth in paragraph (e) of § 2560.521–1 in these final regulations, is basically the same process set forth in the proposed rules. If parties subject to a cease and desist order fail to request a hearing before an administrative law judge within 30 days after receiving notice of the order, the order becomes final. If a party makes a timely request for an administrative hearing, the order is not final until the conclusion of the process set forth in 29 CFR part 2571. It remains, however, in effect and enforceable throughout the administrative review process unless stayed by the Secretary, an administrative law judge, or a court. The section was slightly revised to clarify the nature of evidence the Secretary and the person requesting the hearing must provide to the administrative law judge. The proposed rules simply stated that the Secretary must offer evidence supporting the findings made in issuing the order. The final rules were revised to clarify the findings that must be supported by evidence, *i.e.,* the Secretary's findings that she had reasonable cause to believe that the MEWA (or a person acting as an employee or agent of the MEWA) engaged in the conduct specified in the new ERISA section 521(a) and § 2560.521–1(c)(1) of the proposed and these final rules. The proposed rules further stated that the person requesting the hearing has the burden of proof to show that the order was not necessary to protect the interests of the plan, plan participants, plan beneficiaries, and others. The final rules were revised to state that the person requesting the hearing has the burden of proof to show that the MEWA (or a person acting as an employee or agent of the MEWA) did not engage in the conduct specified in the new ERISA section 521(a) and § 2560.521–1(c)(1) of the proposed and these final rules or that the requirements imposed by the order are arbitrary and capricious. This revision clarifies how the person requesting the hearing shows that the order was not necessary.

Summary Seizure Order

The new section 521(e) of ERISA and paragraph (f)(1) of § 2560.521–1 of these rules authorize the Secretary to issue a summary seizure order when it appears that a MEWA is in a financially hazardous condition. Pursuant to the Fourth Amendment of the U.S. Constitution, the Secretary will generally obtain judicial authorization before issuing a summary seizure order. (See *Colonnade Catering Corp.* v. *U.S.,* 397 U.S. 72 (1970): ''Where Congress has authorized inspection but made no rules governing the procedures that inspectors must follow, the Fourth Amendment and its various restrictive rules apply.'') As in the proposed rules, paragraph (f)(2) provides for such judicial authorization. A court's authorization may be sought ex parte when the Secretary determines that prior notice could result in removal, dissipation, or concealment of plan assets. On its own initiative, the Department has slightly revised paragraph (f)(2) to clarify that it may seek appointment of a receiver or independent fiduciary by the court and other relief at the time it obtains judicial authorization. Paragraph (f)(3) clarifies that the Secretary may act on a summary seizure order prior to judicial authorization, however, if the Secretary reasonably believes that delay in issuing the order will result in the removal, dissipation, or concealment of assets. Under these circumstances, the Secretary will promptly seek judicial authorization after service of the order.

Paragraph (f)(4) of § 2560.521–1 describes the general scope of a seizure order.[4] Under paragraph (f)(4), the Secretary may seize books, documents, and other records of the MEWA. She may also seize the premises, other property, and financial accounts for the purpose of transferring such property to a court-appointed receiver or independent fiduciary. In addition, the order may prohibit the MEWA and its operators from transacting any business or disposing of any property of the MEWA. This paragraph also clarifies that the order may be directed to any person holding assets that are the subject of the order, including banks or other financial institutions.

The principal purpose of a seizure order is to preserve the assets of an employee welfare benefit plan that is a MEWA, and assets of any employee welfare benefit plans under the control

[4] The scope of the summary seizure order in this rule is similar to that provided for in section 201(B) in the National Association of Insurance Commissioners (NAIC) Insurer Receivership Model Act (October 2007).

of a MEWA, that is in a hazardous financial condition so that such assets are available to pay claims and other legitimate expenses of the MEWA and its participating plans. The Secretary will also issue summary seizure orders to prevent abusive operators from illegally using or acquiring plan assets. Seized assets are not deposited with the U.S. Treasury. Instead they are managed by a court-appointed receiver or independent fiduciary. Paragraph (f)(5) states that the Secretary may also, in connection with or following the execution of a summary seizure order, among other things, obtain court appointment of an independent fiduciary or receiver to perform any necessary functions of the MEWA, and court authorization for further actions in the best interest of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, including the liquidation and winding down of the MEWA, if appropriate. There were no comments on the procedures for issuing summary seizure orders or implementing other actions. With the minor exception noted above, and certain clarifying changes in paragraph (f)(5), the provisions in the proposed rules have been adopted without further modification.

The provisions related to effective date of orders (paragraph g), disclosure (§ 2560.521–2), and effect of ERISA section 521 on other enforcement authority (§ 2560.521–3) have not changed from the proposed rules. Paragraph (h) of § 2560.521–1 of the proposed rules regarding the service of orders on persons who are corporations, associations, or other entities or organizations, was slightly revised for these final rules to state that service could also be made to any person designated for service of process under State law or the applicable plan document. Orders issued under these final rules are effective upon service and remain in effect until modified or set aside by the Secretary, an administrative law judge, or a reviewing court. Issued final orders will be made available to the public, as will modifications and terminations of such final orders.

Further, coordination and collaboration with other Federal agencies and the States are integral and instrumental to successful MEWA enforcement efforts. The Secretary remains committed to working closely with them to help detect, prevent, and address MEWA fraud, abuse, and financial insolvency. To facilitate this collaborative approach to MEWA enforcement, the Secretary may disclose the issuance of any order (whether temporary or final) and any information and evidence of any proceedings and hearings related to the order to other Federal, State, or foreign authorities. The sharing of such information, however, does not constitute a waiver of any applicable privilege or claim of confidentiality as to the information so shared.

The Secretary also remains committed to helping MEWAs and plan officials comply with legal requirements and serve plan participants and beneficiaries properly. Section 521 is not, however, the only enforcement tool available to the Secretary with regard to MEWAs. She will continue to use the other investigatory and enforcement tools which were available to the Secretary under title I of ERISA prior to the enactment of ERISA section 521.

Cross-Reference

These rules finalize the standards for the issuance of ex parte cease and desist and summary seizure orders. The Department has also finalized in this Notice rules for administrative hearings on ex parte cease and desist orders. In addition, elsewhere in this issue of the **Federal Register** is a separate regulation amending 29 CFR 2520–101.2, 2520.103–1, 2520.104–20, and 2520.104–41 to implement section 101(g), as amended by the Affordable Care Act, and to enhance the Department's ability to enforce requirements under 29 CFR 2520–101.2.

*B. Procedures for Administrative Hearings on the Issuance of Cease and Desist Orders Regulation (29 CFR Part 2571)*

Purpose and Definitions

These final procedural rules apply only to adjudicatory proceedings before administrative law judges of the U.S. Department of Labor. Under these procedural rules, an adjudicatory proceeding before an administrative law judge is commenced only after a person who is the subject of a temporary cease and desist order timely requests a hearing and files an answer showing cause why the temporary order should be modified or set aside. These procedural regulations are largely consistent with rules of practice and procedure under 29 CFR part 18 that generally apply to matters before the Department's Office of Administrative Law Judges (OALJ). At the same time, they reflect the unique nature of orders issued under ERISA section 521. The definitional section of this rule, for instance, incorporates the basic adjudicatory principles set forth at 29 CFR part 18, but includes terms and concepts of specific relevance to proceedings under ERISA section 521. These rules are controlling to the extent they are inconsistent with 29 CFR part 18.

The authority of the Secretary with respect to the orders and proceedings covered by this rule has been delegated to the Assistant Secretary for the Employee Benefits Security Administration pursuant to Secretary's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). With respect to appeals of administrative law judge decisions to the Secretary, the Assistant Secretary has redelegated this authority to the Director of the Office of Policy and Research of the Employee Benefits Security Administration. As required by the Administrative Procedure Act (5 U.S.C. 552(a)(2)(A)) all final decisions of the Department under section 521 of ERISA shall be maintained, and available for public inspection, in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210.

There were no comments on the proposed administrative procedures. The proposed rules are being published as final rules with only minor clarifying changes. Of note, under § 2571.4(d) of the proposed rules, if the administrative law judge denies a petition to participate in the hearing by persons not named in a temporary order, the administrative law judge shall treat the petition as a request for participation as an amicus curiae. The final rules give the administrative law judge discretion on the treatment of denied petitions and state that the administrative law judge may consider whether to treat the petition as a request for participation as amicus curiae. In addition, as stated in the preamble and § 2571.7 of the proposed rules, the fiduciary exception to the attorney-client and work product privileges applies. Consequently, the administrative law judge may not protect from discovery nor from use in the proceedings communications between an attorney and a plan administrator or other plan fiduciary, or work product, that fall under the fiduciary exception. The final rules clarify that the fiduciary exception applies to communications and work product between an attorney and plan fiduciary concerning plan administration and other fiduciary activities, and not to communications made or documents prepared to aid the fiduciary personally or for settlor acts. *See Solis* v. *The Food Employers Labor Relations Ass'n,* 644 F.3d 221 (4th Cir. 2011). This provision should not be

interpreted as excluding consideration by the administrative law judge of other relevant exceptions to the privileges.

## IV. Economic Impact and Paperwork Burdens

### *A. Summary*

These final regulations implement amendments made by section 6605 of the Affordable Care Act, which added ERISA section 521. As discussed earlier in this preamble, ERISA section 521 provides the Secretary of Labor with new enforcement authority over MEWAs. Specifically, ERISA section 521(a) authorizes the Secretary to issue cease and desist orders, without prior notice or a hearing, when it appears to the Secretary that a MEWA's alleged conduct is fraudulent, creates an immediate danger to the public safety or welfare, or causes or can be reasonably expected to cause significant, imminent, and irreparable public injury. This section also authorizes the Secretary to issue a summary order to seize the assets of a MEWA the Secretary determines to be in a financially hazardous condition. These final regulations implement ERISA section 521(a) by setting forth procedures the Secretary will follow to issue ex parte cease and desist and summary seizure orders.

ERISA section 521(b), as added by Affordable Care Act section 6605, provides that a person that is adversely affected by the issuance of a cease and desist order may request an administrative hearing regarding the order. These final regulations also implement the requirements of ERISA section 521(b) by describing the procedures before the Office of Administrative Law Judges (OALJ) that will apply when a person seeks an administrative hearing for review of a cease and desist order. These regulations maintain the maximum degree of uniformity with rules of practice and procedure under 29 CFR part 18 that generally apply to matters before the OALJ. At the same time, these regulations reflect the unique nature of orders issued under ERISA section 521, and are controlling to the extent they are inconsistent with 29 CFR part 18.

### *B. Executive Order 12866 and 13563 Statement*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing and streamlining rules, and of promoting flexibility. It also requires federal agencies to develop a plan under which the agencies will periodically review their existing significant regulations to make the agencies' regulatory programs more effective or less burdensome in achieving their regulatory objectives.

Under Executive Order 12866, a regulatory action deemed ''significant'' is subject to the requirements of the Executive Order and review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

These regulatory actions are not economically significant within the meaning of section 3(f)(1) of the Executive Order. However, OMB has determined that the actions are significant within the meaning of section 3(f)(4) of the Executive Order, and the Department accordingly provides the following assessment of their potential benefits and costs.

#### 1. Need for Regulatory Action

Properly structured and managed MEWAs that are licensed to operate in a State provide a viable option for some employers to purchase affordable health insurance coverage. However, some MEWAs are marketed by unlicensed entities attempting to avoid State insurance reserve, contribution, and consumer protection requirements. By avoiding these requirements, such entities often are able to market insurance coverage at lower rates than licensed insurers, making them particularly attractive to some small employers that find it difficult to obtain affordable health insurance coverage for their employees. Due to insufficient funding and inadequate reserves, and in some situations, fraud, some MEWAs have become insolvent and unable to pay benefit claims. In addition, certain promoters set up arrangements that they claim are not MEWAs subject to state insurance regulation, because they are established pursuant to collective bargaining agreements. Often, however, these collective bargaining agreements are nothing more than shams designed to avoid state insurance regulation.

Employees and their dependents have become financially responsible for paying medical claims they presumed were covered by insurance after paying health insurance premiums to fraudulent MEWAs.[5] The impact, financial and otherwise, on individuals and families can be devastating when MEWAs become insolvent. Moreover, employees and their dependents may be deprived of medical services if they cannot afford to pay medical claims out-of-pocket that are not paid by the MEWA.

Before the enactment of ERISA section 521, the Department's primary enforcement tool against fraudulent and abusive MEWAs was court-ordered injunctive relief. In order to obtain this relief, the Department must present evidence to a federal court that an ERISA fiduciary breach occurred and that the Department is likely to prevail based on the merits of the case. Gathering sufficient evidence to prove a fiduciary breach is time-consuming and labor-intensive, in most cases, because the Department's investigators must work with poor or nonexistent financial records and uncooperative parties. As a result, the Department at times has been unable to shut down fraudulent and abusive MEWAs quickly enough to preserve their assets and ensure that outstanding benefit claims are timely paid.

States also encountered problems in their enforcement efforts against MEWAs in the absence of federal authority to shut down fraudulent and abusive MEWAs nationally. When one State succeeded in shutting down an abusive MEWA, in some cases, its operators continued operating in another State.[6] ERISA section 521 provides the Department with stronger legal remedies to combat fraudulent and abusive MEWAs.

ERISA section 521(f) provides the Secretary of Labor with the authority to promulgate regulations that may be necessary and appropriate to carry out the Department's authority under ERISA

[5] GAO Report, *supra* note 2.

[6] *Id.*

section 521. These regulations are necessary, because they set forth standards and procedures the Department would use to implement this new enforcement authority. They also are necessary to provide procedures that a person who is adversely affected by the issuance of a cease and desist order may follow to request an administrative hearing regarding the order pursuant to ERISA section 521(b).

2. ERISA Section 521(a) and (e), Ex Parte Cease and Desist and Summary Seizure Orders—Multiple Employer Welfare Arrangements (29 CFR 2560.521–1)

a. Benefits of Final Rules

As discussed earlier in this preamble, ERISA section 521(a) authorizes the Secretary to issue an ex parte cease and desist order if it appears to the Secretary that the alleged conduct of a MEWA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can reasonably be expected to cause, significant, imminent, and irreparable public injury. ERISA section 521(e) allows the Secretary to issue a summary seizure order if it appears that a MEWA is in a financially hazardous condition. These final regulations implement the Department's enhanced enforcement authority by setting forth the standards and procedures the Department will follow in issuing cease and desist and summary seizure orders. They also define important statutory terms and clarify the scope of the Department's authority under ERISA sections 521(a) and (e).

ERISA section 521 and these final regulations will potentially benefit approximately two million MEWA participants [7] by ensuring that MEWA assets are preserved and benefits timely paid. In some cases, individuals have incurred significant medical claims before they learn that their claims are not being paid by improperly operated MEWAs and that they are responsible for paying these claims out-of-pocket. These regulations will help such individuals avoid the financial hardship and adverse health effects that result from unpaid health claims. They also will benefit health care providers that are detrimentally impacted when they are not paid for services they have performed. ERISA section 521 and these final regulations also will improve MEWA compliance and deter abusive practices of fraudulent MEWAs, potentially lessening the need for future use of these provisions. As a result of these statutory and regulatory provisions, the Department will be able to take enforcement action against fraudulent and abusive MEWAs much more quickly and efficiently than under prior law. Common examples of such fraudulent and abusive conduct include a systematic failure to pay benefits claims or a diversion of premiums for personal use. For example, Employers Mutual, a MEWA covering 22,000 individuals which turned out to be a nationwide health insurance fraud, advertised deceptively low premium rates that were far less than necessary to pay promised benefits and misrepresented that the benefits were fully insured. Operators of this MEWA misused and misappropriated premiums so extensively that by the time the Department was able to shut down the MEWA and appoint an independent fiduciary to take over, the fraud left $27 million in unpaid benefits. With this new authority, the Department can take steps to protect plan participants and small employers much earlier in the process and before a MEWA's assets have been exhausted. In addition, the Department will be able to take action against fraudulent and abusive MEWAs nationally, which will prevent unscrupulous MEWA operators from moving their operations to another State when they are shut down in a State.

b. Costs of the Final Rules

As discussed earlier in this preamble, the final rules provide standards and procedures the Department would follow to issue ex parte cease and desist and summary seizure orders with respect to MEWAs. The Department does not expect the rules to impose any significant costs, because it does not require any action or impose any requirements on MEWAs as defined in ERISA section 3(40). Therefore, the Department concludes that the final rules would enhance the Department's ability to take immediate action against fraudulent and abusive MEWAs without imposing major costs.

3. ERISA Section 521(b), Procedures for Administrative Hearings on the Issues of Cease and Desist Orders—Multiple Employer Welfare Arrangements (29 CFR 2571.1 Through 2571.12)

a. Benefits of Final Rule

The Department expects that administrative hearings held pursuant to ERISA section 521(b) and the procedures set forth in the final regulations would benefit the Department and parties requesting a hearing. The Department foresees improved efficiencies through use of administrative hearings, because such hearings should allow the parties involved to obtain a decision in a more timely and efficient manner than is customary in federal court proceedings, which would be the alternative adjudicative forum. The Department expects that these final rules setting forth the standards and procedures the Department would use to implement its cease and desist authority under ERISA section 521 will allow it to take action against fraudulent and abusive MEWAs much more quickly and efficiently than under prior law. These benefits have not been quantified.

To access the benefit of improved efficiencies that would result from an administrative proceeding, the Department compared the cost of contesting a cease and desist order under the final regulations to the cost of contesting an action taken against a MEWA by the Department before the enactment of the Affordable Care Act. The Department's primary enforcement tool against fraudulent and abusive MEWAs before Congress enacted ERISA section 521 was court-ordered injunctive relief. In order to obtain this relief, the Department must present evidence to a court that an ERISA fiduciary breach occurred and that the Department likely would prevail based on the merits of the case. Gathering sufficient evidence to prove a fiduciary breach is very time-consuming and labor-intensive, in most cases, because the Department's investigators must work with poor or nonexistent financial records and uncooperative parties.

The Department believes that an administrative hearing should result in cost savings compared with the baseline cost of litigating in federal court. Because the procedures and evidentiary rules of an administrative hearing generally track the Federal Rules of Civil Procedure and Evidence, document production will be similar for both an administrative hearing and a federal court proceeding. It is unlikely that any additional cost will be incurred for an administrative hearing than would be required to prepare for federal court litigation. Moreover, certain administrative hearing practices and other new procedures initiated by these regulations are expected to result in cost savings over court litigation. For example, parties may be more likely to appear pro se; the prehearing exchange is expected to be short and general; a motion for discovery only will be granted upon a showing of good cause; the general formality of the hearing may vary, particularly depending on whether

[7] The Department's estimate is based on the number of MEWA participants reported on the 2010 Form M–1. Please note that this is an undercount, because the Form M–1 definition of participants specifically excludes dependents.

the petitioner is appearing pro se; and the administrative law judge would be required to make its decision expeditiously after the conclusion of the ERISA section 521 proceeding. The Department cannot with certainty predict that any or all of these conditions will exist nor that any of these factors represent a cost savings, but it is likely that the administrative hearing process will create a consistent legal standard for section 521 proceedings.

The Department invited public comments on the comparative cost of a federal court proceeding versus an administrative hearing. The Department did not receive any comments that addressed this issue.

b. Costs of Final Rule

The Department estimates that the cost of the final regulation would total approximately $548,900 annually. The total hour burden is estimated to be approximately 20 hours, and the dollar equivalent of the hour burden is estimated to be approximately $564. The data and methodology used in developing these estimates are described more fully in the Paperwork Reduction Act section, below.

*C. Paperwork Reduction Act*

This issuance of the cease and desist order final regulation is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), because it does not contain a ''collection of information'' as defined in 44 U.S.C. 3502(3). The Final Rule on Procedures for Administrative Hearings Regarding the Issuance of Cease and Desist Orders under ERISA section 521—Multiple Employer Welfare Arrangements contains a collection of information and the associated hour and cost burden are discussed below.

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the proposed regulation, for OMB's review and solicited public comment. No public comments were received related to the administrative hearing procedures for cease and desist orders. OMB assigned OMB control number 1210–0148 to the ICR but did not approve the ICR at the proposed rule stage.

In connection with publication of these final rules, the Department submitted a revision to the ICR under OMB Control Number 1210–0116. OMB approved the revised ICR, which is scheduled to expire on February 29, 2016. A copy of the revised ICR may be obtained by contacting the PRA addressee shown below or at *http://www.RegInfo.gov.*

PRA ADDRESSEE: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N 5647, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–4745. These are not toll free numbers.

This final regulation establishes procedures for hearings and appeals before an administrative law judge and the Secretary when a MEWA or other person challenges a temporary cease and desist order. As stated in the Regulatory Flexibility Act analysis below, the Department estimates that, on average, a maximum of 10 MEWAs would initiate an adjudicatory proceeding before an administrative law judge to revoke or modify a cease and desist order.[8] Most of the factual information necessary to prepare the petition should be readily available to the MEWA and is expected to take approximately two hours of clerical time to assemble and forward to legal professionals resulting in an estimated total hour burden of approximately 20 hours.

The Department believes that MEWAs will hire outside attorneys to prepare and file the appeal, which is estimated to require 120 hours at $457 per hour.[9] The majority of the attorneys' time is expected to be spent drafting motions, petitions, pleadings, briefs, and other documents relating to the case. Based on the foregoing, the total estimated legal cost associated with the information collection would be approximately $54,840 per petition filed. Additional costs material and mailing costs are estimated at approximately $50.00 per petition.

*Type of Review:* New.

*Agency:* Employee Benefits Security Administration.

*Title:* Final Rule on Procedures for Administrative Hearings Regarding the Issuance of Cease and Desist Orders under ERISA section 521—Multiple Employer Welfare Arrangements.

*OMB Number:* 1210–0148.

*Affected Public:* Business or other for profit; not for profit institutions; State government.

*Respondents:* 10.

*Responses:* 10.

*Estimated Total Burden Hours:* 20 hours.

*Estimated Total Burden Cost (Operating and Maintenance):* $548,900.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) applies to most Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Unless an agency certifies that such a rule will not have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires the agency to present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions. In accordance with the RFA, the Department prepared an initial regulatory flexibility analysis at the proposed rule stage and requested comments on the analysis. No comments were received. Below is the Department's final regulatory flexibility analysis and its certification that these final regulations do not have a significant economic impact on a substantial number of small entities.

The Department does not have data regarding the total number of MEWAs that currently exist. The best information the Department has to estimate the number of MEWAs is based on filing of the Form M–1, which is an annual report that MEWAs and certain collectively bargained arrangements file with the Department. Form M–1 was filed with the Department by 436 MEWAs in 2010, the latest year for which data is available.

[8] As stated in the Department's December l, 2011 Fact Sheet on MEWA Enforcement, the Department has filed 99 civil complaints against MEWAs since 1990, which averages approximately five complaints per year. With the expanded enforcement authority provided to the Department under the Affordable Care Act, the number of civil complaints brought against MEWAs by the Department could increase. Therefore, for purposes of this Paperwork Reduction Act analysis, the Department assumes that twenty complaints will be filed as an upper bound. The Department is unable to estimate the number of cease and desist orders that will be contested; therefore, for purposes of this analysis it assumes that half of the MEWAs will contest cease and desist orders. The Department's fact sheet on MEWA enforcement can be found on the EBSA Web site at *http://www.dol.gov/ebsa/newsroom/fsMEWAenforcement.*

[9] The Department's estimate for the attorney's hourly rate is taken from the Laffey Matrix which provides an estimate of legal service for court cases in the DC area. It can be found at *http://www.laffeymatrix.com/see.html.* The estimate is an average of the 4–7 and 8–10 years of experience rates. The proposed rule included an estimate of 40 hours of outside attorney time for an administrative appeal. Though no comments were submitted on that estimate and we cannot state an estimate with certainty, after further consideration of the potential tasks involved we determined that a higher number would be more appropriate.

The Small Business Administration uses a size standard of less than $7 million in average annual receipts to determine whether businesses in the finance and insurance sector are small entities.[10] While the Department does not collect revenue information on the Form M–1, it does collect data regarding the number of participants covered by MEWAs that file Form M–1 and can use average premium data to determine the number of MEWAs that are small entities because they do not exceed the $7 million dollar threshold. For 2009, the average annual premium for single coverage was $4,717 and the average annual premium for family coverage was $12,696.[11] Combining these premium estimates with estimates from the Current Population Survey regarding the fraction of policies that are for single or family coverage at employers with less than 500 workers, the Department estimates approximately 60 percent of MEWAs (258 MEWAs) are small entities.

In order to develop an estimate of the number of MEWAs that could become subject to a cease and desist order, the Department examined the number of civil claims the Department filed against MEWAs since FY 1990. During this time, the Department filed 99 civil complaints against MEWAs, an average of approximately five complaints per year. For purposes of this analysis, the Department believes that an average of twenty complaints a year is a reasonable upper bound estimate of the number of MEWAs that could be subject to a cease and desist order [12] and that half this number, or an average of ten complaints a year, is a reasonable upper bound estimate of the number of MEWAs that could be expected to request an administrative hearing in a year.

Based on the foregoing, the Department estimates that the greatest number of small MEWAs likely to be subject to a cease and desist order (20/258 or 7.8 percent) and the greatest number of MEWAs likely to petition for an administrative hearing (10/258 or 3.9 percent) represents a small fraction of the total number of small MEWAs.

Accordingly, the Department hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

*E. Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*), as well as Executive Order 12875, these final rules do not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million adjusted for inflation since 1995.

*F. Executive Order 13132*

When an agency promulgates a regulation that has federalism implications, Executive Order 13132 (64 FR 43255, August 10, 1999), requires the Agency to provide a federalism summary impact statement. Pursuant to section 6(c) of the Order, such a statement must include a description of the extent of the agency's consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of the State have been met.

This regulation has federalism implications, because the States and the Federal Government share dual jurisdiction over MEWAs that are employee benefit plans or hold plan assets. Generally, States are primarily responsible for overseeing the financial soundness and licensing of MEWAs under State insurance laws. The Department enforces ERISA's provisions, including its fiduciary responsibility provisions against MEWAs that are ERISA plans or that hold or control plan assets.

Over the years, the Department and State insurance departments have worked closely and coordinated their investigations and other actions against fraudulent and abusive MEWAs. For example, EBSA regional offices have met with State officials in their regions and provided information necessary for States to obtain cease and desist orders to stop abusive and insolvent MEWAs. The Department also has relied on States to obtain cease and desist orders against MEWAs in individual States while it pursued investigations to gather sufficient evidence to obtain injunctive relief in the federal courts to shut down MEWAs nationally. States have often lobbied for stronger federal enforcement tools to help combat fraudulent and insolvent MEWAs. By providing procedures and standards the Department would follow to issue ex parte cease and desist and summary seizure orders and providing procedures for use by administrative law judges and the Secretary of Labor when a MEWA or other person challenges a temporary cease and desist order, these final rules address the States' concerns and enhance the State and Federal Government's joint mission to take immediate action against fraudulent and abusive MEWAs and limit the losses suffered by American workers and their families when abusive MEWAs become insolvent and fail to reimburse medical claims.

**List of Subjects**

*29 CFR Part 2560*

Administrative practice and procedure, Employee welfare benefit plans, Employee Retirement Income Security Act, Law enforcement, Pensions, Multiple employer welfare arrangements, Cease and desist, Seizure.

*29 CFR Part 2571*

Administrative practice and procedure, Employee benefit plans, Employee Retirement Income Security Act, Multiple employer welfare arrangements, Law enforcement, Cease and desist.

For the reasons set out in the preamble, 29 CFR chapter XXV is amended as follows:

## PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

■ 1. The authority citation for part 2560 is revised to read as follows:

**Authority:** 29 U.S.C. 1002(40), 1132, 1133, 1134, 1135, and 1151; and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012).

■ 2. Sections 2560.521–1 through 2560.521–4 are added to read as follows:

### § 2560.521–1 Cease and desist and seizure orders under section 521.

(a) *Purpose.* Section 521(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1151(a), authorizes the Secretary of Labor to issue an ex parte cease and desist order if it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement (MEWA) under section 3(40) of ERISA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause

[10] U.S. Small Business Administration, ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes.'' *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

[11] Kaiser Family Foundation and Health Research Educational Trust ''Employer Health Benefits, 2009 Annual Survey.'' The reported numbers are from Exhibit 1.2 and are for the category Annual, all Small Firms (3–199 workers).

[12] With the expanded enforcement authority provided to the Department under the Affordable Care Act, the number of civil complaints brought against MEWAs by the Department could increase. Therefore, for purposes of this analysis, the Department assumes that twenty complaints will be filed as an upper bound. The Department is unable to estimate the number of cease and desist orders that will be contested; therefore, it assumes that half the MEWAs will contest cease and desist orders.

significant, imminent, and irreparable public injury. Section 521(e) of ERISA authorizes the Secretary to issue a summary seizure order if it appears that a MEWA is in a financially hazardous condition. An order may apply to a MEWA or to persons having custody or control of assets of the subject MEWA, any authority over management of the subject MEWA, or any role in the transaction of the subject MEWA's business. This section sets forth standards and procedures for the Secretary to issue ex parte cease and desist and summary seizure orders and for administrative review of the issuance of such cease and desist orders.

(b) Definitions. When used in this section, the following terms shall have the meanings ascribed in this paragraph (b).

(1) *Multiple employer welfare arrangement* (MEWA) is an arrangement as defined in section 3(40) of ERISA that either is an employee welfare benefit plan subject to Title I of ERISA or offers benefits in connection with one or more employee welfare benefit plans subject to Title I of ERISA. For purposes of section 521 of ERISA, a MEWA does not include a health insurance issuer (including a health maintenance organization) that is licensed to offer or provide health insurance coverage to the public and employers at large in each State in which it offers or provides health insurance coverage, and that, in each such State, is subject to comprehensive licensure, solvency, and examination requirements that the State customarily requires for issuing health insurance policies to the public and employers at large. The term health insurance issuer does not include group health plans. For purposes of this section, the term ''health insurance coverage'' has the same meaning as in ERISA section 733(b)(1).

(2) *The conduct of a MEWA is fraudulent:*

*(i)* When the MEWA or any person acting as an agent or employee of the MEWA commits an act or omission knowingly and with an intent to deceive or defraud plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, the Secretary, or a State regarding:

(A) The financial condition of the MEWA (including the MEWA's solvency and the management of plan assets);

(B) The benefits provided by or in connection with the MEWA;

(C) The management, control, or administration of the MEWA;

(D) The existing or lawful regulatory status of the MEWA under Federal or State law; or,

(E) Any other material fact, as determined by the Secretary, relating to the MEWA or its operation.

(ii) Fraudulent conduct includes any false statement regarding any of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section that is made with knowledge of its falsity or that is made with reckless indifference to the statement's truth or falsity, and the knowing concealment of material information regarding any of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section. Examples of fraudulent conduct include, but are not limited to, misrepresenting the terms of the benefits offered by or in connection with the MEWA or the financial condition of the MEWA or engaging in deceptive acts or omissions in connection with marketing or sales or fees charged to employers or employee organizations.

(3) *The conduct of a MEWA creates an immediate danger to the public safety or welfare* if the conduct of a MEWA or any person acting as an agent or employee of the MEWA impairs, or threatens to impair, a MEWA's ability to pay claims or otherwise unreasonably increases the risk of nonpayment of benefits. Intent to create an immediate danger is not required for this criterion. Examples of such conduct include, but are not limited to, a systematic failure to properly process or pay benefit claims, including failure to establish and maintain a claims procedure that complies with the Secretary's claims procedure regulations (29 CFR 2560.503–1 and 29 CFR 2590.715–2719), failure to establish or maintain a recordkeeping system that tracks the claims made, paid, or processed or the MEWA's financial condition, a substantial failure to meet applicable disclosure, reporting, and other filing requirements, including the annual reporting and registration requirements under sections 101(g) and 104 of ERISA, failure to establish and implement a policy or method to determine that the MEWA is actuarially sound with appropriate reserves and adequate underwriting, failure to comply with a cease and desist order issued by a government agency or court, and failure to hold plan assets in trust.

(4) *The conduct of a MEWA is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury:*

(i) If the conduct of a MEWA, or of a person acting as an agent or employee of the MEWA, is having, or is reasonably expected to have, a significant and imminent negative effect on one or more of the following:

(A) An employee welfare benefit plan that is, or offers benefits in connection with, a MEWA;

(B) The sponsor of such plan or the employer or employee organization that makes payments for benefits provided by or in connection with a MEWA; or

(C) Plan participants and plan beneficiaries; and

(ii) If it is not reasonable to expect that such effect will be fully repaired or rectified.

Intent to cause injury is not required for this criterion. Examples of such conduct include, but are not limited to, conversion or concealment of property of the MEWA; improper disposal, transfer, or removal of funds or other property of the MEWA, including unreasonable compensation or payments to MEWA operators and service providers (e.g. brokers, marketers, and third party administrators); employment by the MEWA of a person prohibited from such employment pursuant to section 411 of ERISA, and embezzlement from the MEWA. For purposes of section 521 of ERISA, compensation that would be excessive under 26 CFR 1.162–7 will be considered unreasonable compensation or payments for purposes of this regulation. Depending upon the facts and circumstances, compensation may be unreasonable under this regulation even it is not excessive under 26 CFR 1.162–7.

(5) *A MEWA is in a financially hazardous condition if:*

(i) The Secretary has probable cause to believe that a MEWA:

(A) Is, or is in imminent danger of becoming, unable to pay benefit claims as they come due, or

(B) Has sustained, or is in imminent danger of sustaining, a significant loss of assets; or

(ii) A person responsible for management, control, or administration of the MEWA's assets is the subject of a cease and desist order issued by the Secretary.

(6) A *person,* for purposes of this section, is an individual, partnership, corporation, employee welfare benefit plan, association, or other entity or organization.

(c) *Temporary cease and desist order.* (1)(i) The Secretary may issue a temporary cease and desist order when the Secretary finds there is reasonable cause to believe that the conduct of a MEWA, or any person acting as an agent or employee of the MEWA, is –

(A) Fraudulent;

(B) Creates an immediate danger to the public safety or welfare; or

(C) Is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

(ii) A single act or omission may be the basis for a temporary cease and desist order.

(2) A temporary cease and desist order, as the Secretary determines is necessary and appropriate to stop the conduct on which the order is based, and to protect the interests of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, may—

(i) Prohibit specific conduct or prohibit the transaction of any business of the MEWA;

(ii) Prohibit any person from taking specified actions, or exercising authority or control, concerning funds or property of a MEWA or of any employee benefit plan, regardless of whether such funds or property have been commingled with other funds or property; and,

(iii) Bar any person either directly or indirectly, from providing management, administrative, or other services to any MEWA or to an employee benefit plan or trust.

(3) The Secretary may require documentation from the subject of the order verifying compliance.

(d) *Effect of order on other remedies.* The issuance of a temporary or final cease and desist order shall not foreclose the Secretary from seeking additional remedies under ERISA.

(e) *Administrative hearing.* (1) A temporary cease and desist order shall become a final order as to any MEWA or other person named in the order 30 days after such person receives notice of the order unless, within this period, such person requests a hearing in accordance with the requirements of this paragraph (e).

(2) A person requesting a hearing must file a written request and an answer to the order showing cause why the order should be modified or set aside. The request and the answer must be filed in accordance with 29 CFR part 2571 and § 18.4 of this title.

(3) A hearing shall be held expeditiously following the receipt of the request for a hearing by the Office of the Administrative Law Judges, unless the parties mutually consent, in writing, to a later date.

(4) The decision of the administrative law judge shall be issued expeditiously after the conclusion of the hearing.

(5) The Secretary must offer evidence supporting the findings made in issuing the order that there is reasonable cause to believe that the MEWA (or a person acting as an employee or agent of the MEWA) engaged in conduct specified in paragraph (c)(1) of this section.

(6) The person requesting the hearing has the burden to show that the order should be modified or set aside. To meet this burden such person must show by a preponderance of the evidence that the MEWA (or a person acting as an employee or agent of the MEWA) did not engage in conduct specified in paragraph (c)(1) of this section or must show that the requirements imposed by the order, are, in whole or part, arbitrary and capricious.

(7) Any temporary cease and desist order for which a hearing has been requested shall remain in effect and enforceable, pending completion of the administrative proceedings, unless stayed by the Secretary, an administrative law judge, or by a court.

(8) The Secretary may require that the hearing and all evidence be treated as confidential.

(f) *Summary seizure order.* (1) Subject to paragraphs (f)(2) and (3) of this section, the Secretary may issue a summary seizure order when the Secretary finds there is probable cause to believe that a MEWA is in a financially hazardous condition.

(2) Except as provided in paragraph (f)(3) of this section, the Secretary, before issuing a summary seizure order to remove assets and records from the control and management of the MEWA or any persons having custody or control of such assets or records, shall obtain judicial authorization from a federal court in the form of a warrant or other appropriate form of authorization and may at that time pursue other actions such as those set forth in paragraph (f)(5) of this section.

(3) If the Secretary reasonably believes that any delay in issuing the order is likely to result in the removal, dissipation, or concealment of plan assets or records, the Secretary may issue and serve a summary seizure order before seeking court authorization. Promptly following service of the order, the Secretary shall seek authorization from a federal court and may at that time pursue other actions such as those set forth in paragraph (f)(5) of this section.

(4) A summary seizure order may authorize the Secretary to take possession or control of all or part of the books, records, accounts, and property of the MEWA (including the premises in which the MEWA transacts its business) to protect the benefits of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, and to safeguard the assets of employee welfare benefit plans. The order may also direct any person having control and custody of the assets that are the subject of the order not to allow any transfer or disposition of such assets except upon the written direction of the Secretary, or of a receiver or independent fiduciary appointed by a court.

(5) In connection with or following the execution of a summary seizure order, the Secretary may—

(i) Secure court appointment of a receiver or independent fiduciary to perform any necessary functions of the MEWA;

(ii) Obtain court authorization for the Secretary, the receiver or independent fiduciary to take any other action to seize, secure, maintain, or preserve the availability of the MEWA's assets; and

(iii) Obtain such other appropriate relief available under ERISA to protect the interest of employee welfare benefit plan participants, plan beneficiaries, employers or employee organizations or other members of the public. Other appropriate equitable relief may include the liquidation and winding up of the MEWA's affairs and, where applicable, the affairs of any person sponsoring the MEWA.

(g) *Effective date of orders.* Cease and desist and summary seizure orders are effective immediately upon issuance by the Secretary and shall remain effective, except to the extent and until any provision is modified or the order is set aside by the Secretary, an administrative law judge, or a court.

(h) *Service of orders.* (1) As soon as practicable after the issuance of a temporary or final cease and desist order and no later than five business days after issuance of a summary seizure order, the Secretary shall serve the order either:

(i) By delivering a copy to the person who is the subject of the order. If the person is a partnership, service may be made to any partner. If the person is a corporation, association, or other entity or organization, service may be made to any officer of such entity or any person designated for service of process under State law or the applicable plan document. If the person is an employee welfare benefit plan, service may be made to a trustee or administrator. A person's attorney may accept service on behalf of such person;

(ii) By leaving a copy at the principal office, place of business, or residence of such person or attorney; or

(iii) By mailing a copy to the last known address of such person or attorney.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is done by regular mail, service is complete upon receipt by the addressee.

(3) Service of a temporary or final cease and desist order and of a summary seizure order shall include a statement of the Secretary's findings giving rise to the order, and, where applicable, a copy of any warrant or other authorization by a court.

**§ 2560.521–2 Disclosure of order and proceedings.**

(a) Notwithstanding § 2560.521–1(e)(8), the Secretary shall make available to the public final cease and desist and summary seizure orders or modifications and terminations of such final orders.

(b) Except as prohibited by applicable law, and at his or her discretion, the Secretary may disclose the issuance of a temporary cease and desist order or summary seizure order and information and evidence of any proceedings and hearings related to an order, to any Federal, State, or foreign authorities responsible for enforcing laws that apply to MEWAs and parties associated with, or providing services to, MEWAs.

(c) The sharing of such documents, material, or other information and evidence under this section does not constitute a waiver of any applicable privilege or claim of confidentiality.

**§ 2560.521–3 Effect on other enforcement authority.**

The Secretary's authority under section 521 shall not be construed to limit the Secretary's ability to exercise his or her enforcement or investigatory authority under any other provision of title I of ERISA. 29 U.S.C. 1001 *et seq.* The Secretary may, in his or her sole discretion, initiate court proceedings without using the procedures in this section.

**§ 2560.521–4 Cross-reference.**

See 29 CFR 2571.1 through 2571.13 for procedural rules relating to administrative hearings under section 521 of ERISA.

■ 3. Add part 2571 to read as follows:

## PART 2571—PROCEDURAL REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

**Subpart A—Procedures for Administrative Hearings on the Issuance of Cease and Desist Orders Under ERISA Section 521—Multiple Employer Welfare Arrangements**

Sec.



**Subpart B—[Reserved]**

**Authority:** 29 U.S.C. 1002(40), 1132, 1135; and 1151, Secretary of Labor's Order 1–2011, 77 FR 1088 (January 9, 2012).

### Subpart A—Procedures for Administrative Hearings on the Issuance of Cease and Desist Orders Under ERISA Section 521—Multiple Employer Welfare Arrangements

**§ 2571.1 Scope of rules.**

The rules of practice set forth in this part apply to ex parte cease and desist order proceedings under section 521 of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The rules of procedure for administrative hearings published by the Department's Office of Administrative Law Judges at Part 18 of this Title will apply to matters arising under ERISA section 521 except as modified by this section. These proceedings shall be conducted as expeditiously as possible, and the parties and the Office of the Administrative Law Judges shall make every effort to avoid delay at each stage of the proceedings.

**§ 2571.2 Definitions.**

For section 521 proceedings, this section shall apply in lieu of the definitions in § 18.2 of this title:

(a) *Adjudicatory proceeding* means a judicial-type proceeding before an administrative law judge leading to an order;

(b) *Administrative law judge* means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105;

(c) *Answer* means a written statement that is supported by reference to specific circumstances or facts surrounding the temporary order issued pursuant to 29 CFR 2560.521–1(c);

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means a proposed written agreement and order containing a specified proposed remedy or other relief acceptable to the Secretary and consenting parties;

(f) *Final order* means a cease and desist order that is a final order of the Secretary of Labor under ERISA section 521. Such final order may result from a decision of an administrative law judge or of the Secretary on review of a decision of an administrative law judge, or from the failure of a party to invoke the procedures for a hearing under 29 CFR 2560.521–1 within the prescribed time limit. A final order shall constitute a final agency action within the meaning of 5 U.S.C. 704;

(g) *Hearing* means that part of a section 521 proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(h) *Order* means the whole or any part of a final procedural or substantive disposition of a section 521 proceeding;

(i) *Party* includes a person or agency named or admitted as a party to a section 521 proceeding;

(j) *Person* includes an individual, partnership, corporation, employee welfare benefit plan, association, or other entity or organization;

(k) *Petition* means a written request, made by a person or party, for some affirmative action;

(l) *Respondent* means the party against whom the Secretary is seeking to impose a cease and desist order under ERISA section 521;

(m) *Secretary* means the Secretary of Labor or his or her delegate;

(n) *Section 521 proceeding* means an adjudicatory proceeding relating to the issuance of a temporary order under 29 CFR 2560.521–1 and section 521 of ERISA;

(o) *Solicitor* means the Solicitor of Labor or his or her delegate; and

(p) *Temporary order* means the temporary cease and desist order issued by the Secretary under 29 CFR 2560.521–1(c) and section 521 of ERISA.

**§ 2571.3 Service: copies of documents and pleadings.**

For section 521 proceedings, this section shall apply in lieu of § 18.3 of this title:

(a) *In general.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street NW., Suite 400, Washington, DC 20001–8002, or to the OALJ Regional Office to which the section 521 proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other

parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Secretary shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 521 Proceeding, P.O. Box 1914, Washington, DC 20013 and any attorney named for service of process as set forth in the temporary order. The person serving the document shall certify to the manner of date and service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions, and all other documents shall be made in such manner as the Office of Administrative Law Judges determines to the last known address.

(d) *Form of pleadings.*

(1) Every pleading or other paper filed in a section 521 proceeding shall designate the Employee Benefits Security Administration (EBSA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the party or person representing the party. Although there are no formal specifications for documents, they should be printed when possible on standard size 8½ × 11 inch paper.

(2) Illegible documents, whether handwritten, printed, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

**§ 2571.4 Parties.**

For section 521 proceedings, this section shall apply in lieu of § 18.10 of this title:

(a) The term ''party'' wherever used in these rules shall include any person that is a subject of the temporary order and is challenging the temporary order under these section 521 proceedings, and the Secretary. A party challenging a temporary order shall be designated as the ''respondent.'' The Secretary shall be designated as the ''complainant.''

(b) Other persons shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the section 521 proceeding and their interest is not adequately represented by the existing parties, and that in the discretion of the administrative law judge the participation of such persons would be appropriate.

(c) A person not named in a temporary order, but wishing to participate as a respondent under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person has knowledge of, or should have known about, the section 521 proceeding. The petition shall be filed with the administrative law judge and served on each person who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner's interest in the section 521 proceeding (including how the section 521 proceedings will directly and adversely affect them or the class they represent and why their interest is not adequately represented by the existing parties);

(2) How his or her participation as a party will contribute materially to the disposition of the section 521 proceeding;

(3) Who will appear for the petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the section 521 proceeding, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where persons with common interest file petitions to participate as parties in a section 521 proceeding, the administrative law judge may request all such petitioners to designate a single representative, or the administrative law judge may designate one or more of the petitioners to represent the others. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and may consider whether to treat the petition as a request for participation as amicus curiae.

**§ 2571.5 Consequences of default.**

For section 521 proceedings, this section shall apply in lieu of § 18.5(b) of this title. Failure of the respondent to file an answer to the temporary order within the 30-day period provided by 29 CFR 2560.521–1(e) shall constitute a waiver of the respondent's right to appear and contest the temporary order. Such failure shall also be deemed to be an admission of the facts as alleged in the temporary order for purposes of any proceeding involving the order issued under section 521 of ERISA. The temporary order shall then become the final order of the Secretary, within the meaning of 29 CFR 2571.2(f), 30 days from the date of the service of the temporary order.

**§ 2571.6 Consent order or settlement.**

For section 521 proceedings, this section shall apply in lieu of § 18.9 of this title:

(a) *In general.* At any time after the commencement of a section 521 proceeding, the parties jointly may move to defer the hearing for a reasonable time in order to negotiate a settlement or an agreement containing findings and a consent order disposing of the whole or any part of the section 521 proceeding. The administrative law judge shall have discretion to allow or deny such a postponement and to determine its duration. In exercising this discretion, the administrative law judge shall consider the nature of the section 521 proceeding, the requirements of the public interest, the representations of the parties and the probability of reaching an agreement that will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of the section 521 proceeding or any part thereof shall also provide:

(1) That the consent order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which the consent order is based shall consist solely of the notice and the agreement;

(3) A waiver of any further procedural steps before the administrative law judge;

(4) A waiver of any right to challenge or contest the validity of the consent order and decision entered into in accordance with the agreement; and

(5) That the consent order and decision of the administrative law judge shall be final agency action within the meaning of 5 U.S.C. 704.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order to the administrative law judge;

(2) Notify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action subject to compliance with the terms of the settlement; or

(3) Inform the administrative law judge that agreement cannot be reached.

(d) *Disposition.* If a settlement agreement containing consent findings and an order, agreed to by all the parties to a section 521 proceeding, is submitted within the time allowed therefor, the administrative law judge shall incorporate all of the findings, terms, and conditions of the settlement agreement and consent order of the parties. Such decision shall become a final agency action within the meaning of 5 U.S.C. 704.

(e) *Settlement without consent of all respondents.* In cases in which some, but not all, of the respondents to a section 521 proceeding submit an agreement and consent order to the administrative law judge, the following procedure shall apply:

(1) If all of the respondents have not consented to the proposed settlement submitted to the administrative law judge, then such non-consenting parties must receive notice and a copy of the proposed settlement at the time it is submitted to the administrative law judge;

(2) Any non-consenting respondent shall have fifteen (15) days to file any objections to the proposed settlement with the administrative law judge and all other parties;

(3) If any respondent submits an objection to the proposed settlement, the administrative law judge shall decide within thirty (30) days after receipt of such objections whether to sign or reject the proposed settlement. Where the record lacks substantial evidence upon which to base a decision or there is a genuine issue of material fact, then the administrative law judge may establish procedures for the purpose of receiving additional evidence upon which a decision on the contested issue may be reasonably based;

(4) If there are no objections to the proposed settlement, or if the administrative law judge decides to sign the proposed settlement after reviewing any such objections, the administrative law judge shall incorporate the consent agreement into a decision meeting the requirements of paragraph (d) of this section; and

(5) If the consent agreement is incorporated into a decision meeting the requirements of paragraph (d) of this section, the administrative law judge shall continue the section 521 proceeding with respect to any non-consenting respondents.

**§ 2571.7 Scope of discovery**.

For section 521 proceedings, this section shall apply in lieu of § 18.14 of this title:

(a) A party may file a motion to conduct discovery with the administrative law judge. The administrative law judge may grant a motion for discovery only upon a showing of good cause. In order to establish ''good cause'' for the purposes of this section, the moving party must show that the requested discovery relates to a genuine issue as to a fact that is material to the section 521 proceeding. The order of the administrative law judge shall expressly limit the scope and terms of the discovery to that for which ''good cause'' has been shown, as provided in this paragraph.

(b) Any evidentiary privileges apply as they would apply in a civil proceeding in federal district court. For example, legal advice provided by an attorney to a client is generally protected from disclosure. Mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative developed in anticipation of litigation are also generally protected from disclosure. The administrative law judge may not, however, protect from discovery or use, relevant communications between an attorney and a plan administrator or other plan fiduciary, or work product, that fall under the fiduciary exception to the attorney-client or work product privileges. The fiduciary exception to these privileges exists when an attorney advises the plan administrator or other plan fiduciary on matters concerning plan administration or other fiduciary activities. Consequently, the administrative law judge may not protect such communications from discovery or from use by the Secretary in the proceedings. The administrative law judge also may also not protect attorney work product prepared to assist the fiduciary in its fiduciary capacity from discovery or from use by the Secretary in the proceedings. The fiduciary exception does not apply, however, to the extent that communications were made or documents were prepared exclusively to aid the fiduciary personally or for non-fiduciary matters (*e.g.* settlor acts), provided that the plan did not pay for the legal services. The Secretary need not make a special showing, such as good cause, merely to obtain information or documents covered by the fiduciary exception. Other relevant exceptions to the attorney-client or work product privileges shall also apply.

**§ 2571.8 Summary decision.**

For section 521 proceedings, this section shall apply in lieu of § 18.41 of this title:

(a) *No genuine issue of material fact.* Where the administrative law judge finds that no issue of a material fact has been raised, he or she may issue a decision which, in the absence of an appeal, pursuant to §§ 2571.10 through 2571.12, shall become a final agency action within the meaning of 5 U.S.C. 704.

(b) A decision made under this section, shall include a statement of:

(1) Findings of fact and conclusions of law, and the reasons thereof, on all issues presented; and

(2) Any terms and conditions of the ruling.

(c) A copy of any decision under this section shall be served on each party.

**§ 2571.9 Decision of the administrative law judge.**

For section 521 proceedings, this section shall apply in lieu of § 18.57 of this title:

(a) *Proposed findings of fact, conclusions, and order.* Within twenty (20) days of the filing of the transcript of the testimony, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge, subject to the judge's discretion, proposed findings of fact, conclusions of law, and order together with a supporting brief expressing the reasons for such proposals. Such proposals and briefs shall be served on all parties, and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b) *Decision of the administrative law judge.* The administrative law judge shall make his or her decision expeditiously after the conclusion of the section 521 proceeding. The decision of the administrative law judge shall include findings of fact and conclusions of law with reasons therefore upon each material issue of fact or law presented on the record. The decision of the administrative law judge shall be based upon the whole record and shall be supported by reliable and probative evidence. The decision of the administrative law judge shall become final agency action within the meaning of 5 U.S.C. 704 unless an appeal is made pursuant to the procedures set forth in §§ 2571.10 through 2571.12.

**§ 2571.10 Review by the Secretary.**

(a) The Secretary may review the decision of an administrative law judge.

Such review may occur only when a party files a notice of appeal from a decision of an administrative law judge within twenty (20) days of the issuance of such a decision. In all other cases, the decision of the administrative law judge shall become the final agency action within the meaning of 5 U.S.C. 704.

(b) A notice of appeal to the Secretary shall state with specificity the issue(s) in the decision of the administrative law judge on which the party is seeking review. Such notice of appeal must be served on all parties of record.

(c) Upon receipt of an appeal, the Secretary shall request the Chief Administrative Law Judge to submit to the Secretary a copy of the entire record before the administrative law judge.

**§ 2571.11 Scope of review by the Secretary.**

The review of the Secretary shall be based on the record established before the administrative law judge. There shall be no opportunity for oral argument.

**§ 2571.12 Procedures for review by the Secretary.**

(a) Upon receipt of a notice of appeal, the Secretary shall establish a briefing schedule which shall be served on all parties of record. Upon motion of one or more of the parties, the Secretary may, in her discretion, permit the submission of reply briefs.

(b) The Secretary shall issue a decision as promptly as possible after receipt of the briefs of the parties. The Secretary may affirm, modify, or set aside, in whole or in part, the decision on appeal and shall issue a statement of reasons and bases for the action(s) taken. Such decision by the Secretary shall be the final agency action with the meaning of 5 U.S.C. 704.

**§ 2571.13 Effective date.**

This regulation is effective with respect to all cease and desist orders issued by the Secretary under section 521 of ERISA at any time after April 1, 2013.

## Subpart B—[Reserved]

Signed at Washington, DC, this 26th day of February, 2013.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. 2013–04862 Filed 2–28–13; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2012–1094]**

## Special Local Regulation; Annual Marine Events on the Colorado River, Between Davis Dam (Bullhead City, AZ) and Headgate Dam (Parker, AZ) Within the San Diego Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Parker International Water Ski Race Special Local Regulation located upon the Colorado River from 8 a.m. through 5 p.m. on March 9 and March 10, 2013. The event will cover an area beginning at the Blue Water Marina in Parker, AZ, and extending approximately 10 miles to La Paz County Park. This action is necessary provide for the safety of the participants, crew, spectators, sponsor vessels of the race, and general users of the waterway. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

**DATES:** The regulations in 33 CFR 100.1102 will be enforced from 8 a.m. through 5 p.m. on March 9 and March 10, 2013.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Bryan Gollogly, Waterways Management, U.S. Coast Guard Sector San Diego Coast Guard; telephone (619)–278–7656, email *D11–PF-MarineEventsSanDiego@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Special Local Regulation for the Parker International Water Ski Race in 33 CFR 100.1102 from 8 a.m. through 5 p.m. on March 9 through March 10, 2013.

Under the provisions of 33 CFR 100.1102, a vessel may not enter the regulated area, unless it receives permission from the COTP. Spectator vessels may safely transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of ship parade participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1102 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners. If the COTP or his designated representative determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: February 12, 2013.

**S.M. Mahoney,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2013–04730 Filed 2–28–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2013–0048]**

## Safety Zone; Underwater Escape Event, Seaport, East River, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone in the Captain of the Port New York Zone on the specified date and time. This action is necessary to ensure the safety of participants, vessels and spectators from hazards associated with the escape artist event and associated pyrotechnics display. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port (COTP).

**DATES:** The regulation for the safety zone described in 33 CFR 165.160 will be enforced March 24, 2013, from 6:30 p.m. to 8:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Lieutenant Junior Grade Kristopher Kesting, Coast Guard; telephone 718–354–4154, email *Kristopher.R.Kesting@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone listed in 33 CFR 165.160 on the specified date and time as indicated in Table 1 below. This regulation was published in the **Federal Register** on November 9, 2011 (76 FR 69614).

TABLE 1

| | |
|---|---|
| 1. Merlini Underwater Escape. | • Launch site: All waters of the East River south of the Brooklyn Bridge and north of a line drawn from the southwest corner of Pier 3, Brooklyn, to the southeast corner of Pier 6 Manhattan. |
| Seaport, East River Safety Zone. | • Date: March 24, 2013. |
| 33 CFR 165.160(4.4). | • Time: 6:30 p.m.–8:30 p.m. |

Under the provisions of 33 CFR 165.160, a vessel may not enter the regulated area unless given express permission from the COTP or the designated representative. Spectator vessels may transit outside the regulated area but may not anchor, block, loiter in, or impede the transit of other vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.160(a) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide mariners with advanced notification of enforcement periods via the Local Notice to Mariners and marine information broadcasts. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: February 1, 2013.

**G. P. Hitchen,**

*Captain, U.S. Coast Guard, Acting Captain of the Port New York.*

[FR Doc. 2013–04731 Filed 2–28–13; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 121009528–2729–02]**

**RIN 0648–XC499**

### Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of North Carolina is transferring a portion of its 2013 commercial summer flounder quota to the Commonwealth of Virginia and to the State of Rhode Island. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

**DATES:** Effective February 28, 2013, through December 31, 2013.

**FOR FURTHER INFORMATION CONTACT:** Carly Bari, Fishery Management Specialist, 978–281–9224.

**SUPPLEMENTARY INFORMATION:** Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 1,410,230 lb (639,670 kg) of its 2013 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in Virginia due to hazardous shoaling, from January 1, 2013, to January 31, 2013, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. North Carolina has also agreed to transfer 36,784 lb (16,685 kg) of its 2013 commercial quota to Rhode Island. This transfer was prompted by summer flounder landings of three North Carolina vessels that were granted safe harbor in Rhode Island on January 31, 2013, and February 8, 2013, thereby requiring a quota transfer to account for an increase in Rhode Island's landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder quotas for calendar year 2013 are: North Carolina, 1,692,732 lb (767,810 kg); Virginia, 3,848,822 lb (1,745,796 kg); and Rhode Island, 1,830,884 lb (830,475 kg).

#### Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 25, 2013.

**Kara Meckley,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–04818 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 111207737–2141–02]**

**RIN 0648–XC522**

### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catch Vessels Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for Pacific cod by catcher vessels (CVs) using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the A season allowance of the 2013 Pacific cod total allowable catch apportioned to CVs using trawl gear in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), March 1, 2013, through 1200 hours, A.l.t., March 3, 2013. Comments must be received at the following address no later than 4:30 p.m., A.l.t., March 18, 2013.

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2012–0180 by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-180,* click the ''Comment Now!'' icon,

complete the required fields, and enter or attach your comments.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory area of the GOA under § 679.20(d)(1)(iii) on February 14, 2013 (78 FR 11790, February 20, 2013).

As of February 25, 2013, NMFS has determined that approximately 226 metric tons of Pacific cod remain in the A season directed fishing allowance for CVs using trawl gear in the Western Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2013 TAC of Pacific cod in the Western Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA, effective 1200 hours, A.l.t., March 1, 2013.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA, effective 1200 hours, A.l.t., March 3, 2013. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the directed Pacific cod fishery by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 25, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the Pacific cod fishery by catcher vessels using trawl gear in the Western Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 18, 2013.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 26, 2013.

**Kara Meckley,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–04815 Filed 2–26–13; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 121018563–3148–02]**

**RIN 0648–XC311**

## Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2013 and 2014 Harvest Specifications for Groundfish

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; closures.

**SUMMARY:** NMFS announces final 2013 and 2014 harvest specifications and prohibited species catch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2013 and 2014 fishing years, and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the BSAI (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective from 1200 hrs, Alaska local time (A.l.t.), March 1, 2013, through 2400 hrs, A.l.t., December 31, 2014.

**ADDRESSES:** Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact

Statement (EIS), Record of Decision (ROD), Supplementary Information Report (SIR) to the EIS, and the Final Regulatory Flexibility Analysis (FRFA), prepared for this action are available from *http://alaskafisheries.noaa.gov*. The final 2012 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2012, as well as the SAFE reports for previous years, are available from the North Pacific Fishery Management Council (Council) at 605 West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, phone 907–271–2809, or from the Council's Web site at *http://alaskafisheries.noaa.gov/npfmc*.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP, and NMFS approved it under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species; the sum TAC for all groundfish species must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). This final rule specifies the TAC at 2.0 million mt for both 2013 and 2014. NMFS also must specify apportionments of TAC, prohibited species catch (PSC) allowances, and prohibited species quota (PSQ) reserves established by § 679.21; seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC; Amendment 80 allocations; and Community Development Quota (CDQ) reserve amounts established by § 679.20(b)(1)(ii). The final harvest specifications set forth in Tables 1 through 22 of this action satisfy these requirements.

Section 679.20(c)(3)(i) further requires NMFS to consider public comment on the proposed annual TACs (and apportionments thereof) and PSC allowances, and to publish final harvest specifications in the **Federal Register**. The proposed 2013 and 2014 harvest specifications and PSC allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 6, 2012 (77 FR 72791). Comments were invited and accepted through January 7, 2013. NMFS received two letters with five comments on the proposed harvest specifications. These comments are summarized and responded to in the ''Response to Comments'' section of this rule. NMFS consulted with the Council on the final 2013 and 2014 harvest specifications during the December 2012 Council meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 2013 and 2014 harvest specifications as recommended by the Council.

## Acceptable Biological Catch (ABC) and TAC Harvest Specifications

The final ABC levels for Alaska groundfish are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations. The FMP specifies a series of six tiers to define OFL and ABC amounts based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available while Tier 6 represents the lowest.

In December 2012, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of the BSAI groundfish stocks. The Council's Plan Team compiled and presented this information in the 2012 SAFE report for the BSAI groundfish fisheries, dated November 2012. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. NMFS notified the public and asked for review of the SAFE report in the notice of proposed harvest specifications; the report is still available (see **ADDRESSES**). From these data and analyses, the Plan Team estimated an OFL and ABC for each species or species category.

In December 2012, the SSC, AP, and Council reviewed the Plan Team's recommendations. Except for rougheye rockfish, the SSC concurred with the Plan Team's recommendations, and the Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). For 2013 and 2014, the SSC recommended lower rougheye rockfish OFLs and ABCs than the OFLs and ABCs recommended by the Plan Team. For rougheye rockfish, the SSC recommended including the estimated recruitment from the 1998 through 2009 time period to calculate the OFLs and ABCs, resulting in lower amounts. The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of the TACs within the required OY range of 1.4 million to 2.0 million mt. As required by annual catch limit rules for all fisheries (74 FR 3178, January 16, 2009), none of the Council's recommended TACs for 2013 or 2014 exceeds the final 2013 or 2014 ABCs for any species category. The final 2013 and 2014 harvest specifications approved by the Secretary of Commerce are unchanged from those recommended by the Council and are consistent with the preferred harvest strategy alternative in the EIS (see **ADDRESSES**). NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2012 SAFE report that was approved by the Council.

## Changes From the Proposed 2013 and 2014 Harvest Specifications for the BSAI

In October 2012, the Council proposed its recommendations for the 2013 and 2014 harvest specifications (77 FR 72791, December 6, 2012), based largely on information contained in the 2011 SAFE report for the BSAI groundfish fisheries. Through the proposed harvest specifications, NMFS notified the public that these harvest specifications could change, as the Council would consider information contained in the final 2012 SAFE report, recommendations from the SSC, Plan Team, and AP committees, and public testimony when making its recommendations for final harvest specification at the December Council meeting. NMFS further notified the public that, as required by the FMP and its implementing regulations, the sum of the TACs must be within the OY range of 1.4 million and 2.0 million mt.

Information contained in the 2012 SAFE reports indicates biomass changes for several groundfish species from the 2011 SAFE reports. At the December 2012 Council meeting, the SSC recommended the 2013 and 2014 ABCs for many species based on the best and most recent information contained in the 2012 SAFE reports. This recommendation resulted in an ABC sum total for all BSAI groundfish species in excess of 2 million mt for both 2013 and 2014. Based on the SSC ABC recommendations and the 2012

SAFE reports, the Council recommends increasing Bering Sea pollock by 45,100 mt. In terms of percentage, the largest increases in TACs were for BSAI squid and BSAI Pacific ocean perch. Both of these species are valuable, and likely to be harvested to the full TAC available. The Council increased the squid TAC due to increased incidental catch in 2012, and increased the Pacific ocean perch TACs due to higher ABCs, resulting from larger biomass estimates. Conversely, the SSC decreased the OFL and ABC of BSAI Atka mackerel from the proposed OFL and ABC, and these reductions led to the largest decrease in TAC in terms of tonnage. In terms of percentage change from the proposed TACs, Bogoslof pollock and BSAI Greenland turbot had the largest decreases in TAC. These decreases are due to lower incidental catches of Bogoslof pollock in 2012, and lower biomass estimates of Greenland turbot. The TACs for shortraker rockfish and rougheye rockfish were also decreased because of smaller OFLs and ABCs resulting from lower biomass estimates. The TACS for octopuses, sharks, ''other rockfish,'' northern rockfish, Alaska plaice, flathead sole, and Kamchatka flounder were all decreased because harvests in 2012 were much less than the proposed 2013 TACs. The changes to TAC between the proposed and final harvest specifications are based on the most recent scientific and economic information and are consistent with the FMP, regulatory obligations, and harvest strategy as described in the proposed harvest specifications. These changes are compared in Table 1A.

Table 1 lists the Council's recommended final 2013 and 2014 OFL, ABC, TAC, ITAC, and CDQ reserve amounts of the BSAI groundfish. NMFS concurs in these recommendations. The final 2013 and 2014 TAC recommendations for the BSAI are within the OY range established for the BSAI and do not exceed the ABC for any species or species group. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1—FINAL 2013 AND 2014 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

| Species | Area | 2013 | | | | | 2014 | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | OFL | ABC | TAC | ITAC [2] | CDQ [3] | OFL | ABC | TAC | ITAC [2] | CDQ [3] |
| Pollock [4] | BS | 2,550,000 | 1,375,000 | 1,247,000 | 1,122,300 | 124,700 | 2,730,000 | 1,430,000 | 1,247,000 | 1,122,300 | 124,700 |
| | AI | 45,600 | 37,300 | 19,000 | 17,100 | 1,900 | 48,600 | 39,800 | 19,000 | 17,100 | 1,900 |
| | Bogoslof | 13,400 | 10,100 | 100 | 500 | 0 | 13,400 | 10,100 | 100 | 500 | 0 |
| Pacific cod [5] | BSAI | 359,000 | 307,000 | 260,000 | 232,180 | 27,820 | 379,000 | 323,000 | 260,880 | 232,966 | 27,914 |
| Sablefish | BS | 1,870 | 1,580 | 1,580 | 1,304 | 217 | 1,760 | 1,480 | 1,480 | 629 | 56 |
| | AI | 2,530 | 2,140 | 2,140 | 1,739 | 361 | 2,370 | 2,010 | 2,010 | 427 | 38 |
| Atka mackerel | BSAI | 57,700 | 50,000 | 25,920 | 23,147 | 2,773 | 56,500 | 48,900 | 25,379 | 22,663 | 2,716 |
| | EAI/BS | n/a | 16,900 | 16,900 | 15,092 | 1,808 | n/a | 16,500 | 16,500 | 14,735 | 1,766 |
| | CAI | n/a | 16,000 | 7,520 | 6,715 | 805 | n/a | 15,700 | 7,379 | 6,589 | 790 |
| | WAI | n/a | 17,100 | 1,500 | 1,340 | 161 | n/a | 16,700 | 1,500 | 1,340 | 161 |
| Yellowfin sole | BSAI | 220,000 | 206,000 | 198,000 | 176,814 | 21,186 | 219,000 | 206,000 | 198,000 | 176,814 | 21,186 |
| Rock sole | BSAI | 241,000 | 214,000 | 92,380 | 82,495 | 9,885 | 229,000 | 204,000 | 92,000 | 82,156 | 9,844 |
| Greenland turbot | BSAI | 2,540 | 2,060 | 2,060 | 1,751 | n/a | 3,270 | 2,650 | 2,650 | 2,253 | n/a |
| | BS | n/a | 1,610 | 1,610 | 1,369 | 172 | n/a | 2,070 | 2,070 | 1,760 | 221 |
| | AI | n/a | 450 | 450 | 383 | 0 | n/a | 580 | 580 | 493 | 0 |
| Arrowtooth flounder | BSAI | 186,000 | 152,000 | 25,000 | 21,250 | 2,675 | 186,000 | 152,000 | 25,000 | 21,250 | 2,675 |
| Kamchatka flounder | BSAI | 16,300 | 12,200 | 10,000 | 8,500 | 0 | 16,300 | 12,200 | 10,000 | 8,500 | 0 |
| Flathead sole [6] | BSAI | 81,500 | 67,900 | 22,699 | 20,270 | 2,429 | 80,100 | 66,700 | 22,543 | 20,131 | 2,412 |
| Other flatfish [7] | BSAI | 17,800 | 13,300 | 3,500 | 2,975 | 0 | 17,800 | 13,300 | 4,000 | 3,400 | 0 |
| Alaska plaice | BSAI | 67,000 | 55,200 | 20,000 | 17,000 | 0 | 60,200 | 55,800 | 20,000 | 17,000 | 0 |
| Pacific ocean perch | BSAI | 41,900 | 35,100 | 35,100 | 30,995 | n/a | 39,500 | 33,100 | 33,100 | 29,228 | n/a |
| | BS | n/a | 8,130 | 8,130 | 6,911 | 0 | n/a | 7,680 | 7,680 | 6,528 | 0 |
| | EAI | n/a | 9,790 | 9,790 | 8,742 | 1,048 | n/a | 9,240 | 9,240 | 8,251 | 989 |
| | CAI | n/a | 6,980 | 6,980 | 6,233 | 747 | n/a | 6,590 | 6,590 | 5,885 | 705 |
| | WAI | n/a | 10,200 | 10,200 | 9,109 | 1,091 | n/a | 9,590 | 9,590 | 8,564 | 1,026 |
| Northern rockfish | BSAI | 12,200 | 9,850 | 3,000 | 2,550 | 0 | 12,000 | 9,320 | 3,000 | 2,550 | 0 |
| Shortraker rockfish | BSAI | 493 | 370 | 370 | 315 | 0 | 493 | 370 | 370 | 315 | 0 |
| Rougheye rockfish [8] | BSAI | 462 | 378 | 378 | 321 | 0 | 524 | 429 | 429 | 365 | 0 |
| | EBS/EAI | n/a | 169 | 169 | 144 | 0 | n/a | 189 | 189 | 161 | 0 |
| | CAI/WAI | n/a | 209 | 209 | 178 | 0 | n/a | 240 | 240 | 204 | 0 |
| Other rockfish [9] | BSAI | 1,540 | 1,159 | 873 | 742 | 0 | 1,540 | 1,159 | 1,159 | 985 | 0 |
| | BS | n/a | 686 | 400 | 340 | 0 | n/a | 686 | 686 | 583 | 0 |
| | AI | n/a | 473 | 473 | 402 | 0 | n/a | 473 | 473 | 402 | 0 |
| Skates | BSAI | 45,800 | 38,800 | 24,000 | 20,400 | 0 | 44,100 | 37,300 | 25,000 | 21,250 | 0 |
| Sculpins | BSAI | 56,400 | 42,300 | 5,600 | 4,760 | 0 | 56,400 | 42,300 | 5,600 | 4,760 | 0 |
| Sharks | BSAI | 1,360 | 1,020 | 100 | 85 | 0 | 1,360 | 1,020 | 100 | 85 | 0 |
| Squids | BSAI | 2,620 | 1,970 | 700 | 595 | 0 | 2,620 | 1,970 | 700 | 595 | 0 |
| Octopuses | BSAI | 3,450 | 2,590 | 500 | 425 | 0 | 3,450 | 2,590 | 500 | 425 | 0 |
| TOTAL | | 4,028,465 | 2,639,317 | 2,000,000 | 1,790,512 | 197,004 | 4,205,287 | 2,697,498 | 2,000,000 | 1,788,646 | 196,381 |

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock, the portion of the sablefish TAC allocated to hook-and-line and pot gear, and Amendment 80 species, 15 percent of each TAC is put into a reserve. The ITAC for these species is the remainder of the TAC after the subtraction of these reserves. For pollock and Amendment 80 species, ITAC is the non-CDQ allocation of TAC (see footnotes 3 and 5).

[3] For the Amendment 80 species (Atka mackerel, flathead sole, rock sole, yellowfin sole, Pacific cod, and Aleutian Islands Pacific ocean perch), 10.7 percent of the TAC is reserved for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31). Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear, 7.5 percent of the sablefish TAC allocated to trawl gear, and 10.7 percent of the TACs for Bering Sea Greenland turbot and arrowtooth flounder are reserved for use by CDQ participants (see § 679.20(b)(1)(ii)(B) and (D)). Aleutian Islands Greenland turbot, ''other flatfish,'' Alaska plaice, Bering Sea Pacific ocean perch, northern rockfish, shortraker rockfish, rougheye rockfish, ''other rockfish,'' skates, sculpins, sharks, squids, and octopuses are not allocated to the CDQ program.

[4] Under § 679.20(a)(5)(i)(A)(*1*), the annual BS subarea pollock TAC after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (4.0 percent), is further allocated by sector for a directed pollock fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(*2*)(*i*) and *(ii)*, the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second for the incidental catch allowance (1,600 mt) is allocated to the Aleut Corporation for a directed pollock fishery.

[5] The Pacific cod TAC is reduced by 3 percent from the ABC to account for the State of Alaska's (State) guideline harvest level in State waters of the Aleutian Islands subarea.
[6] ''Flathead sole'' includes *Hippoglossoides elassodon* (flathead sole) and *Hippoglossoides robustus* (Bering flounder).
[7] ''Other flatfish'' includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder, Kamchatka flounder, and Alaska plaice.
[8] ''Rougheye rockfish'' includes *Sebastes aleutianus* (rougheye) and *Sebastes melanostictus* (blackspotted).
[9] ''Other rockfish'' includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern rockfish, dark rockfish, shortraker rockfish, and rougheye rockfish.
**Note:** Regulatory areas and districts are defined at § 679.2 (BS = Bering Sea subarea, AI = Aleutian Islands subarea, EAI = Eastern Aleutian Islands district, CAI = Central Aleutian Islands district, WAI = Western Aleutian Islands district.)

TABLE 1A—COMPARISON OF FINAL 2013 AND 2014 WITH PROPOSED 2013 AND 2014 TOTAL ALLOWABLE CATCH IN THE BSAI

[Amounts are in metric tons]

| Species | Area [1] | 2013 Final TAC | 2013 Proposed TAC | 2013 Difference from proposed | 2014 Final TAC | 2014 Proposed TAC | 2014 Difference from proposed |
|---|---|---|---|---|---|---|---|
| Pollock | BS | 1,247,000 | 1,201,900 | 45,100 | 1,247,000 | 1,201,900 | 45,100 |
| | AI | 19,000 | 19,000 | 0 | 19,000 | 19,000 | 0 |
| | Bogoslof | 100 | 500 | −400 | 100 | 500 | −400 |
| Pacific cod | BSAI | 260,000 | 262,900 | −2,900 | 260,880 | 262,900 | −2,020 |
| Sablefish | BS | 1,580 | 2,200 | −620 | 1,480 | 2,200 | −720 |
| | AI | 2,140 | 2,020 | 120 | 2,010 | 2,020 | −10 |
| Atka mackerel | EAI/BS | 16,900 | 31,700 | −14,800 | 16,500 | 31,700 | −15,200 |
| | CAI | 7,520 | 8,883 | −1,363 | 7,379 | 8,883 | −1,504 |
| | WAI | 1,500 | 1,500 | 0 | 1,500 | 1,500 | 0 |
| Yellowfin sole | BSAI | 198,000 | 203,900 | −5,900 | 198,000 | 203,900 | −5,900 |
| Rock sole | BSAI | 92,380 | 87,000 | 5,380 | 92,000 | 87,000 | 5,000 |
| Greenland turbot | BS | 1,610 | 6,010 | −4,400 | 2,070 | 6,010 | −3,940 |
| | AI | 450 | 2,020 | −1,570 | 580 | 2,020 | −1,440 |
| Arrowtooth flounder | BSAI | 25,000 | 25,000 | 0 | 25,000 | 25,000 | 0 |
| Kamchatka flounder. | BSAI | 10,000 | 17,700 | −7,700 | 10,000 | 17,700 | −7,700 |
| Flathead sole | BSAI | 22,699 | 34,134 | −11,435 | 22,543 | 34,134 | −11,591 |
| Other flatfish | BSAI | 3,500 | 3,200 | 300 | 4,000 | 3,200 | 800 |
| Alaska plaice | BSAI | 20,000 | 24,000 | −4,000 | 20,000 | 24,000 | −4,000 |
| Pacific ocean perch | BS | 8,130 | 6,540 | 1,590 | 7,680 | 6,540 | 1,140 |
| | EAI | 9,790 | 6,440 | 3,350 | 9,240 | 6,440 | 2,800 |
| | CAI | 6,980 | 5,710 | 1,270 | 6,590 | 5,710 | 880 |
| | WAI | 10,200 | 9,610 | 590 | 9,590 | 9,610 | −20 |
| Northern rockfish | BSAI | 3,000 | 4,700 | −1,700 | 3,000 | 4,700 | −1,700 |
| Shortraker rockfish | BSAI | 370 | 393 | −23 | 370 | 393 | −23 |
| Rougheye rockfish | BS/EAI | 169 | 241 | −72 | 189 | 241 | −52 |
| | CAI/WAI | 209 | 258 | −49 | 240 | 258 | −18 |
| Other rockfish | BS | 400 | 500 | −100 | 686 | 500 | 186 |
| | AI | 473 | 570 | −97 | 473 | 570 | −97 |
| Skates | BSAI | 24,000 | 24,746 | −746 | 25,000 | 24,746 | 254 |
| Sculpins | BSAI | 5,600 | 5,200 | 400 | 5,600 | 5,200 | 400 |
| Sharks | BSAI | 100 | 200 | −100 | 100 | 200 | −100 |
| Squids | BSAI | 700 | 425 | 275 | 700 | 425 | 275 |
| Octopuses | BSAI | 500 | 900 | −400 | 500 | 900 | −400 |
| TOTAL | BSAI | 2,000,000 | 2,000,000 | 0 | 2,000,000 | 2,000,000 | 0 |

[1] Bering Sea subarea (BS), Aleutian Islands subarea (AI), Bering Sea and Aleutian Islands management area (BSAI), Eastern Aleutian District (EAI), Central Aleutian District (CAI), and Western Aleutian District (WAI).

**Groundfish Reserves and the Incidental Catch Allowance (ICA) for Pollock, Atka Mackerel, Flathead Sole, Rock Sole, Yellowfin Sole, and Aleutian Islands Pacific Ocean Perch**

Section 679.20(b)(1)(i) requires NMFS to reserve 15 percent of the TAC for each target species, except for pollock, hook-and-line and pot gear allocation of sablefish, and Amendment 80 species, in a non-specified reserve. Section 679.20(b)(1)(ii)(B) requires that 20 percent of the hook-and-line and pot gear allocation of sablefish be set aside for the fixed-gear sablefish CDQ reserve. Section 679.20(b)(1)(ii)(D) requires NMFS to allocate 7.5 percent of the trawl gear allocations of sablefish and 10.7 percent of the Bering Sea Greenland turbot and arrowtooth flounder TACs to the respective CDQ reserves. Under section 679.20(b)(1)(ii)(C), NMFS must allocate 10.7 percent of the TAC for Atka mackerel, Aleutian Islands Pacific ocean perch, yellowfin sole, rock sole, flathead sole, and Pacific cod to the CDQ reserves. Sections 679.20(a)(5)(i)(A) and 679.31(a) also require that 10 percent of the BSAI pollock TAC be allocated to the pollock CDQ directed fishing allowance (DFA). The entire Bogoslof District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ allocations by gear.

Pursuant to § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 3 percent of the BS subarea pollock TAC after subtracting the 10 percent CDQ reserve. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 1999 through 2012. During this 14-year period, the pollock incidental catch ranged from a low of 2.3 percent in 2012

to a high of 5 percent in 1999, with a 14-year average of 3.2 percent. Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS establishes a pollock ICA of 1,600 mt of the AI subarea TAC after subtracting the 10-percent CDQ DFA. This allowance is based on NMFS' examination of the pollock incidental catch, including the incidental catch by CDQ vessels, in target fisheries other than pollock from 2003 through 2012. During this 10-year period, the incidental catch of pollock ranged from a low of 5 percent in 2006 to a high of 10 percent in 2003, with a 10-year average of 7 percent.

Pursuant to § 679.20(a)(8) and (10), NMFS allocates ICAs of 5,000 mt of flathead sole, 10,000 mt of rock sole, 2,000 mt of yellowfin sole, 10 mt of Western Aleutian District (WAI) Pacific ocean perch, 75 mt of Central Aleutian District (CAI) Pacific ocean perch, 200 mt of Eastern Aleutian District (EAI) Pacific ocean perch, 40 mt of WAI Atka mackerel, 75 mt of CAI Atka mackerel, and 1,000 mt of EAI and BS subarea Atka mackerel TAC after subtracting the 10.7 percent CDQ reserve. These ICA allowances are based on NMFS' examination of the incidental catch in other target fisheries from 2003 through 2012.

The regulations do not designate the remainder of the non-specified reserve by species or species group. Any amount of the reserve may be apportioned to a target species category during the year, provided that such apportionments do not result in overfishing (see § 679.20(b)(1)(i)). The Regional Administrator has determined that the ITACs specified for the species listed in Table 1 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC for shortraker rockfish, rougheye rockfish, northern rockfish, Pacific ocean perch, ''other rockfish,'' skates, sculpins, sharks, and octopuses by 15 percent of the TAC in 2013 and 2014.

TABLE 2—FINAL 2013 AND 2014 APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

| Species-area or subarea | 2013 ITAC | 2013 Reserve amount | 2013 Final ITAC | 2014 ITAC | 2014 Reserve amount | 2014 Final ITAC |
|---|---|---|---|---|---|---|
| Shortraker rockfish-BSAI | 315 | 56 | 370 | 315 | 56 | 370 |
| Rougheye rockfish-EBS/EAI | 144 | 25 | 169 | 161 | 28 | 189 |
| Rougheye rockfish-CAI/WAI | 178 | 31 | 209 | 204 | 36 | 240 |
| Northern rockfish-BSAI | 2,550 | 450 | 3,000 | 2,550 | 450 | 3,000 |
| Pacific ocean perch-Bering Sea subarea | 6,911 | 1,220 | 8,130 | 6,528 | 1,152 | 7,680 |
| Other rockfish-Bering Sea subarea | 340 | 60 | 400 | 583 | 103 | 686 |
| Other rockfish-Aleutian Islands subarea | 402 | 71 | 473 | 402 | 71 | 473 |
| Skates-BSAI | 20,400 | 3,600 | 24,000 | 21,250 | 3,750 | 25,000 |
| Sculpins-BSAI | 4,760 | 840 | 5,600 | 4,760 | 840 | 5,600 |
| Sharks-BSAI | 85 | 15 | 100 | 85 | 15 | 100 |
| Octopuses-BSAI | 425 | 75 | 500 | 425 | 75 | 500 |
| Total | 36,508 | 6,443 | 42,951 | 37,262 | 6,576 | 43,838 |

**Allocation of Pollock TAC Under the American Fisheries Act (AFA)**

Section 679.20(a)(5)(i)(A) requires that the BS subarea pollock TAC be apportioned, after subtracting 10 percent for the CDQ program and 3 percent for the ICA, as a DFA as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor (C/P) sector, and 10 percent to the mothership sector. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10), and 60 percent of the DFA is allocated to the B season (June 10–November 1) (§ 679.20(a)(5)(i)(A)). The AI-directed pollock fishery allocation to the Aleut Corporation is the amount of pollock remaining in the AI subarea after subtracting 1,900 mt for the CDQ DFA (10 percent) and 1,600 mt for the ICA (§ 679.20(a)(5)(iii)(B)(*2*)(*ii*)). In the AI subarea, 40 percent of the DFA is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 3 lists these 2013 and 2014 amounts.

Section 679.20(a)(5)(i)(A)(*4*) also includes several specific requirements regarding BS subarea pollock allocations. First, it requires that 8.5 percent of the pollock allocated to the C/P sector be available for harvest by AFA catcher vessels (CVs) with C/P sector endorsements, unless the Regional Administrator receives a cooperative contract that allows the distribution of harvest among AFA C/Ps and AFA CVs in a manner agreed to by all members. Second, AFA C/Ps not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the C/P sector. Table 4 lists the 2013 and 2014 allocations of pollock TAC. Tables 17 through 22 list the AFA C/P and CV harvesting sideboard limits. The tables for the pollock allocations to the BS subarea inshore pollock cooperatives and open access sector will be posted on the Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

Table 3 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to no more than 28 percent of the annual DFA before 12:00 noon, April 1, as provided in § 679.20(a)(5)(i)(C). The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 3 lists these 2013 and 2014 amounts by sector.

TABLE 3—FINAL 2013 AND 2014 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

| Area and sector | 2013 Allocations | 2013 A Season [1] | | 2013 B Season [1] | 2014 Allocations | 2014 A Season [1] | | 2014 B Season [1] |
|---|---|---|---|---|---|---|---|---|
| | | A Season DFA | SCA Harvest limit [2] | B Season DFA | | A Season DFA | SCA Harvest limit [2] | B Season DFA |
| Bering Sea subarea | 1,247,000 | n/a | n/a | n/a | 1,247,000 | n/a | n/a | n/a |
| CDQ DFA | 124,700 | 49,880 | 34,916 | 74,820 | 124,700 | 49,880 | 34,916 | 74,820 |
| ICA [1] | 33,669 | n/a | n/a | n/a | 33,669 | n/a | n/a | n/a |
| AFA Inshore | 544,316 | 217,726 | 152,408 | 326,589 | 544,316 | 217,726 | 152,408 | 326,589 |
| AFA Catcher/Processors [3] | 435,452 | 174,181 | 121,927 | 261,271 | 435,452 | 174,181 | 121,927 | 261,271 |
| Catch by C/Ps | 398,439 | 159,376 | n/a | 239,063 | 398,439 | 159,376 | n/a | 239,063 |
| Catch by CVs [3] | 37,013 | 14,805 | n/a | 22,208 | 37,013 | 14,805 | n/a | 22,208 |
| Unlisted C/P Limit [4] | 2,177 | 871 | n/a | 1,306 | 2,177 | 871 | n/a | 1,306 |
| AFA Motherships | 108,863 | 43,545 | 30,482 | 65,318 | 108,863 | 43,545 | 30,482 | 65,318 |
| Excessive Harvesting Limit [5] | 190,510 | n/a | n/a | n/a | 190,510 | n/a | n/a | n/a |
| Excessive Processing Limit [6] | 326,589 | n/a | n/a | n/a | 326,589 | n/a | n/a | n/a |
| Total Bering Sea DFA | 1,088,631 | 435,452 | 304,817 | 653,179 | 1,088,631 | 435,452 | 304,817 | 653,179 |
| Aleutian Islands subarea [1] | 19,000 | n/a | n/a | n/a | 19,000 | n/a | n/a | n/a |
| CDQ DFA | 1,900 | 760 | n/a | 1,140 | 1,900 | 760 | n/a | 1,140 |
| ICA | 1,600 | 800 | n/a | 800 | 1,600 | 800 | n/a | 800 |
| Aleut Corporation | 15,500 | 13,360 | n/a | 2,140 | 15,500 | 14,360 | n/a | 1,140 |
| Bogoslof District ICA [7] | 100 | n/a | n/a | n/a | 100 | n/a | n/a | n/a |

[1] Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3 percent), is allocated as a DFA as follows: Inshore sector—50 percent, catcher/processor sector (C/P)—40 percent, and mothership sector—10 percent. In the BS subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(*i*) and *(ii),* the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(*A*)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(*A*)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

**Allocation of the Atka Mackerel TACs**

Section 679.20(a)(8) allocates the Atka mackerel TACs to the Amendment 80 and BSAI trawl limited access sectors, after subtracting the CDQ reserves, jig gear allocation, and ICAs for the BSAI trawl limited access sector and non-trawl gear sector (Table 4). The process for allocating the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is listed in Table 33 to part 679 and in § 679.91. Pursuant to § 679.20(a)(8)(i), up to 2 percent of the EAI and the BS subarea Atka mackerel ITAC may be allocated to the jig gear sector. Allocation is recommended annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approves, a 0.5 percent allocation of the Atka mackerel ITAC in the EAI and BS subarea to the jig gear sector in 2013 and 2014. This percentage is applied to the Atka mackerel TAC after subtracting the CDQ reserve and the ICA.

Section 679.20(a)(8)(ii)(C)(*3*) limits the annual Atka mackerel TAC for Area 542 (the CAI) to no more than 47 percent of the Area 542 ABC. Section 679.7(a)(19) prohibits retention of Atka mackerel in Area 543 (the WAI), and the TAC is set to account for discards in other fisheries. Section 679.20(a)(8)(ii)(A) apportions the Atka mackerel TAC into two equal seasonal allowances. Section 679.23(e)(3) sets the first seasonal allowance for directed fishing with trawl gear from January 20 through June 10 (A season), and the second seasonal allowance from June 10 through November 1 (B season). Section 679.23(e)(4)(iii) applies Atka mackerel seasons to CDQ Atka mackerel fishing. The ICA and jig gear allocations are not apportioned by season.

Sections 679.20(a)(8)(ii)(C)(*1*)(*i*) and (*ii*) require the Amendment 80 cooperatives and CDQ groups to limit harvest to 10 percent of their Central Aleutian District Atka mackerel allocation equally divided between the A and B seasons, within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described on Table 12 to part 679. Vessels not fishing under the authority of an Amendment 80 cooperative quota or CDQ allocation are prohibited from conducting directed fishing for Atka mackerel inside Steller sea lion critical habitat in the Central Aleutian District.

Table 4 lists these 2013 and 2014 Atka mackerel season and area allowances, as well as the sector allocations. The 2014 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will post 2014 Amendment 80 allocations when they become available in December 2013.

TABLE 4—FINAL 2013 AND 2014 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

| Sector [1] | Season [2,3,4] | 2013 allocation by area | | | 2014 allocation by area | | |
|---|---|---|---|---|---|---|---|
| | | Eastern Aleutian District/ Bering Sea | Central [5] Aleutian District | Western Aleutian District | Eastern Aleutian District/ Bering Sea | Central [5] Aleutian District | Western Aleutian District |
| TAC | n/a | 16,900 | 7,520 | 1,500 | 16,500 | 7,379 | 1,500 |
| CDQ reserve | Total | 1,808 | 805 | 161 | 1,766 | 790 | 161 |
| | A | 904 | 402 | 80 | 883 | 395 | 80 |
| | Critical Habitat [5] | n/a | 40 | n/a | n/a | 39 | n/a |
| | B | 904 | 402 | 80 | 883 | 395 | 80 |
| | Critical Habitat [5] | n/a | 40 | n/a | n/a | 39 | n/a |
| ICA | Total | 1,000 | 75 | 40 | 1,000 | 75 | 40 |
| Jig [6] | Total | 70 | 0 | 0 | 69 | 0 | 0 |
| BSAI trawl limited access | Total | 1,402 | 664 | 0 | 1,367 | 651 | 0 |
| | A | 701 | 332 | 0 | 683 | 326 | 0 |
| | B | 701 | 332 | 0 | 683 | 326 | 0 |
| Amendment 80 sectors | Total | 12,619 | 5,976 | 1,300 | 12,299 | 5,863 | 1,300 |
| | A | 6,310 | 2,988 | 650 | 6,150 | 2,932 | 650 |
| | B | 6,310 | 2,988 | 650 | 6,150 | 2,932 | 650 |
| Alaska Groundfish Cooperative [7] | Total [7] | 7,271 | 3,563 | 783 | n/a | n/a | n/a |
| | A | 3,636 | 1,782 | 392 | n/a | n/a | n/a |
| | Critical Habitat [5] | n/a | 178 | n/a | n/a | n/a | n/a |
| | B | 3,636 | 1,782 | 392 | n/a | n/a | n/a |
| | Critical Habitat [5] | n/a | 178 | n/a | n/a | n/a | n/a |
| Alaska Seafood Cooperative [7] | Total [7] | 5,348 | 2,414 | 517 | n/a | n/a | n/a |
| | A | 2,674 | 1,207 | 259 | n/a | n/a | n/a |
| | Critical Habitat [5] | n/a | 121 | n/a | n/a | n/a | n/a |
| | B | 2,674 | 1,207 | 259 | n/a | n/a | n/a |
| | Critical Habitat [5] | n/a | 121 | n/a | n/a | n/a | n/a |

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Regulations at §§ 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to November 1.

[5] Section 679.20(a)(8)(ii)(C) requires the TAC in area 542 shall be no more than 47% of ABC, and Atka mackerel harvests for Amendment 80 cooperatives and CDQ groups within waters 10 nm to 20 nm of Gramp Rock and Tag Island, as described Table 12 to part 679, in Area 542 are limited to no more than 10 percent of the Amendment 80 cooperative Atka mackerel allocation or 10 percent of the CDQ Atka mackerel allocation.

[6] Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

[7] The 2014 allocations for Atka mackerel between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will post 2014 Amendment 80 allocations when they become available in December 2013.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

### Allocation of the Pacific Cod ITAC

Sections 679.20(a)(7)(i) and (ii) allocate the Pacific cod TAC in the BSAI, after subtracting 10.7 percent for the CDQ reserve, as follows: 1.4 percent to vessels using jig gear; 2.0 percent to hook-and-line and pot CVs less than 60 ft (18.3 m) length overall (LOA); 0.2 percent to hook-and-line CVs greater than or equal to 60 ft (18.3 m) LOA; 48.7 percent to hook-and-line C/P; 8.4 percent to pot CVs greater than or equal to 60 ft (18.3 m) LOA; 1.5 percent to pot C/Ps; 2.3 percent to AFA trawl C/Ps; 13.4 percent to non-AFA trawl C/Ps; and 22.1 percent to trawl CVs. The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. For 2013 and 2014, the Regional Administrator establishes an ICA of 500 mt based on anticipated incidental catch by these sectors in other fisheries.

The ITAC allocation of Pacific cod to the Amendment 80 sector is established in Table 33 to part 679 and § 679.91. The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will post 2014 Amendment 80 allocations when they become available in December 2013.

The Pacific cod ITAC is apportioned into seasonal allowances to disperse the Pacific cod fisheries over the fishing year (see §§ 679.20(a)(7) and 679.23(e)(5)). In accordance with § 679.20(a)(7)(iv)(B) and (C), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

The CDQ and non-CDQ season allowances by gear based on the 2013 and 2014 Pacific cod TACs are listed in Tables 5 and 6, and are based on the sector allocation percentages of Pacific cod set forth at §§ 679.20(a)(7)(i)(B) and 679.20(a)(7)(iv)(A); and the seasonal allowances of Pacific cod set forth at § 679.23(e)(5).

Section 679.7(a)(19) prohibits retaining Pacific cod in Area 543, and

§ 679.7(a)(23) prohibits directed fishing for Pacific cod with hook-and-line, pot, or jig gear in the Aleutian Islands subarea November 1 through December 31.

TABLE 5—FINAL 2013 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

| Gear sector | Percent | 2013 Share of gear sector total | 2013 Share of sector total | 2013 Seasonal apportionment | |
|---|---|---|---|---|---|
| | | | | Seasons | Amount |
| Total TAC | 100 | 260,000 | n/a | n/a | n/a |
| CDQ | 10.7 | 27,820 | n/a | see § 679.20(a)(7)(i)(B) | n/a |
| Total hook-and-line/pot gear | 60.8 | 141,165 | n/a | n/a | n/a |
| Hook-and-line/pot ICA [1] | n/a | 500 | n/a | see § 679.20(a)(7)(ii)(B) | n/a |
| Hook-and-line/pot sub-total | n/a | 140,665 | n/a | n/a | n/a |
| Hook-and-line catcher/processor | 48.7 | n/a | 112,671 | Jan 1–Jun 10 | 57,462 |
| | | | | Jun 10–Dec 31 | 55,209 |
| Hook-and-line catcher vessel ≥ 60 ft LOA | 0.2 | n/a | 463 | Jan 1–Jun 10 | 236 |
| | | | | Jun 10–Dec 31 | 227 |
| Pot catcher/processor | 1.5 | n/a | 3,470 | Jan 1–Jun 10 | 1,770 |
| | | | | Sept 1–Dec 31 | 1,700 |
| Pot catcher vessel ≥ 60 ft LOA | 8.4 | n/a | 19,434 | Jan 1–Jun 10 | 9,911 |
| | | | | Sept 1–Dec 31 | 9,523 |
| Catcher vessel < 60 ft LOA using hook-and-line or pot gear. | 2 | n/a | 4,627 | n/a | n/a |
| Trawl catcher vessel | 22.1 | 51,312 | n/a | Jan 20–Apr 1 | 37,971 |
| | | | | Apr 1–Jun 10 | 5,644 |
| | | | | Jun 10–Nov 1 | 7,697 |
| AFA trawl catcher/processor | 2.3 | 5,340 | n/a | Jan 20–Apr 1 | 4,005 |
| | | | | Apr 1- Jun 10 | 1,335 |
| | | | | Jun 10–Nov 1 | 0 |
| Amendment 80 | 13.4 | 31,112 | n/a | Jan 20–Apr 1 | 23,334 |
| | | | | Apr 1- Jun 10 | 7,778 |
| | | | | Jun 10–Nov 1 | 0 |
| Alaska Groundfish Cooperative | n/a | n/a | 5,793 | Jan 20–Apr 1 | 4,345 |
| | | | | Apr 1- Jun 10 | 1,448 |
| | | | | Jun 10–Nov 1 | 0 |
| Alaska Seafood Cooperative | n/a | n/a | 25,319 | Jan 20–Apr 1 | 18,989 |
| | | | | Apr 1–Jun 10 | 6,330 |
| | | | | Jun 10–Nov 1 | 0 |
| Jig | 1.4 | 3,251 | n/a | Jan 1–Apr 30 | 1,950 |
| | | | | Apr 30–Aug 31 | 650 |
| | | | | Aug 31–Dec 31 | 650 |

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2013 based on anticipated incidental catch in these fisheries.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 6—FINAL 2014 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

| Gear sector | Percent | 2014 Share of gear sector total | 2014 Share of sector total | 2014 Seasonal apportionment [2] | |
|---|---|---|---|---|---|
| | | | | Dates | Amount |
| Total TAC | 100 | 260,880 | n/a | n/a | n/a |
| CDQ | 10.7 | 27,914 | n/a | see § 679.20(a)(7)(i)(B) | n/a |
| Total hook-and-line/pot gear | 60.8 | 141,643 | n/a | n/a | n/a |
| Hook-and-line/pot ICA [1] | n/a | 500 | n/a | see § 679.20(a)(7)(ii)(B) | n/a |
| Hook-and-line/pot sub-total | n/a | 141,143 | n/a | n/a | n/a |
| Hook-and-line catcher/processor | 48.7 | n/a | 113,054 | Jan 1–Jun 10 | 57,657 |
| | | | | Jun 10–Dec 31 | 55,396 |
| Hook-and-line catcher vessel ≥ 60 ft LOA | 0.2 | n/a | 464 | Jan 1–Jun 10 | 237 |
| | | | | Jun 10–Dec 31 | 228 |
| Pot catcher/processor | 1.5 | n/a | 3,482 | Jan 1–Jun 10 | 1,776 |
| | | | | Sept 1–Dec 31 | 1,706 |
| Pot catcher vessel ≥ 60 ft LOA | 8.4 | n/a | 19,500 | Jan 1–Jun 10 | 9,945 |
| | | | | Sept 1–Dec 31 | 9,555 |
| Catcher vessel < 60 ft LOA using hook-and-line or pot gear. | 2 | n/a | 4,643 | n/a | n/a |
| Trawl catcher vessel | 22.1 | 51,485 | n/a | Jan 20–Apr 1 | 38,099 |
| | | | | Apr 1–Jun 10 | 5,663 |
| | | | | Jun 10–Nov 1 | 7,723 |
| AFA trawl catcher/processor | 2.3 | 5,358 | n/a | Jan 20–Apr 1 | 4,019 |
| | | | | Apr 1–Jun 10 | 1,340 |

TABLE 6—FINAL 2014 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC—Continued

[Amounts are in metric tons]

| Gear sector | Percent | 2014 Share of gear sector total | 2014 Share of sector total | 2014 Seasonal apportionment [2] | |
|---|---|---|---|---|---|
| | | | | Dates | Amount |
| Amendment 80 | 13.4 | 31,217 | n/a | Jun 10–Nov 1 | 0 |
| | | | | Jan 20–Apr 1 | 23,413 |
| | | | | Apr 1- Jun 10 | 7,804 |
| Amendment 80 limited access [2] | n/a | n/a | see footnote 2 | Jun 10–Nov 1 | 0 |
| | | | | Jan 20–Apr 1 | 75% |
| | | | | Apr 1- Jun 10 | 25% |
| Amendment 80 cooperatives [2] | n/a | n/a | see footnote 2 | Jun 10–Nov 1 | 0 |
| | | | | Jan 20–Apr 1 | 75% |
| | | | | Apr 1–Jun 10 | 25% |
| Jig | 1.4 | 3,262 | n/a | Jun 10–Nov 1 | 0 |
| | | | | Jan 1–Apr 30 | 1,957 |
| | | | | Apr 30–Aug 31 | 652 |
| | | | | Aug 31–Dec 31 | 652 |

[1] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2014 based on anticipated incidental catch in these fisheries.

[2] The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will post 2014 Amendment 80 allocations when they become available in December 2013.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

**Sablefish Gear Allocation**

Sections 679.20(a)(4)(iii) and (iv) require that sablefish TAC for the BS and AI subareas be allocated between trawl and hook-and-line or pot gear sectors. Gear allocations of the TAC for the BS subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear. Gear allocations of the TACs for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Section 679.20(b)(1)(ii)(B) requires NMFS to apportion 20 percent of the hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, § 679.20(b)(1)(ii)(D) requires that 7.5 percent of the trawl gear allocation of sablefish from the nonspecified reserves, established under § 679.20(b)(1)(i), be assigned to the CDQ reserve. The Council recommended that only trawl sablefish TAC be established biennially. The harvest specifications for the hook-and-line gear and pot gear sablefish Individual Fishing Quota (IFQ) fisheries will be limited to the 2013 fishing year to ensure those fisheries are conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries will reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries will remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. Table 7 lists the 2013 and 2014 gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 7—FINAL 2013 AND 2014 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

| Subarea and gear | Percent of TAC | 2013 Share of TAC | 2013 ITAC | 2013 CDQ Reserve | 2014 Share of TAC | 2014 ITAC | 2014 CDQ Reserve |
|---|---|---|---|---|---|---|---|
| Bering Sea | | | | | | | |
| Trawl [1] | 50 | 790 | 672 | 59 | 740 | 629 | 56 |
| Hook-and-line/pot gear [2] | 50 | 790 | 632 | 158 | n/a | n/a | n/a |
| Total | 100 | 1,580 | 1,304 | 217 | 740 | 629 | 56 |
| Aleutian Islands | | | | | | | |
| Trawl [1] | 25 | 535 | 455 | 40 | 503 | 428 | 38 |
| Hook-and-line/pot gear [2] | 75 | 1,605 | 1,284 | 321 | n/a | n/a | n/a |
| Total | 100 | 2,140 | 1,739 | 361 | 503 | 428 | 38 |

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtracting these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. The Council recommended that specifications for the hook-and-line gear sablefish IFQ fisheries be limited to one year.

**Note:** Sector apportionments may not total precisely due to rounding.

**Allocation of the AI Pacific Ocean Perch, and BSAI Flathead Sole, Rock Sole, and Yellowfin Sole TACs**

Sections 679.20(a)(10)(i) and (ii) require that NMFS allocate AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TAC between the Amendment 80 sector and BSAI trawl limited access sector, after subtracting 10.7 percent for the CDQ reserve and an ICA for the BSAI trawl limited access sector and vessels using non-trawl gear. The allocation of the ITAC for AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole to the Amendment 80 sector is established in accordance with Tables 33 and 34 to part 679 and § 679.91.

The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will publish 2014 Amendment 80 allocations when they become available in December 2013. Tables 8 and 9 list the 2013 and 2014 allocations of the AI Pacific ocean perch, and BSAI flathead sole, rock sole, and yellowfin sole TACs.

TABLE 8—FINAL 2013 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TAC

[Amounts are in metric tons]

| Sector | Pacific ocean perch | | | Flathead sole | Rock sole | Yellowfin sole |
|---|---|---|---|---|---|---|
| | Eastern Aleutian District | Central Aleutian District | Western Aleutian District | BSAI | BSAI | BSAI |
| TAC | 9,790 | 6,980 | 10,200 | 22,699 | 92,380 | 198,000 |
| CDQ | 1,048 | 747 | 1,091 | 2,429 | 9,885 | 21,186 |
| ICA | 200 | 75 | 10 | 5,000 | 10,000 | 2,000 |
| BSAI trawl limited access | 854 | 616 | 182 | 0 | 0 | 34,868 |
| Amendment 80 | 7,688 | 5,542 | 8,917 | 15,270 | 72,495 | 139,946 |
| Alaska Groundfish Cooperative | 4,077 | 2,939 | 4,728 | 2,982 | 20,348 | 59,403 |
| Alaska Seafood Cooperative | 3,612 | 2,604 | 4,189 | 12,288 | 52,147 | 80,543 |

**Note:** Sector apportionments may not total precisely due to rounding.

TABLE 9—FINAL 2013 COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVES, INCIDENTAL CATCH AMOUNTS (ICAS), AND AMENDMENT 80 ALLOCATIONS OF THE ALEUTIAN ISLANDS PACIFIC OCEAN PERCH, AND BSAI FLATHEAD SOLE, ROCK SOLE, AND YELLOWFIN SOLE TAC

[Amounts are in metric tons]

| Sector | Pacific ocean perch | | | Flathead sole | Rock sole | Yellowfin sole |
|---|---|---|---|---|---|---|
| | Eastern Aleutian District | Central Aleutian District | Western Aleutian District | BSAI | BSAI | BSAI |
| TAC | 9,240 | 6,590 | 9,590 | 22,543 | 92,000 | 198,000 |
| CDQ | 989 | 705 | 1,026 | 2,412 | 9,844 | 21,186 |
| ICA | 200 | 75 | 10 | 5,000 | 10,000 | 2,000 |
| BSAI trawl limited access | 805 | 581 | 171 | 0 | 0 | 34,868 |
| Amendment 80 [1] | 7,246 | 5,229 | 8,383 | 15,131 | 72,156 | 139,946 |

[1] The 2014 allocations for Amendment 80 species between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. NMFS will publish 2014 Amendment 80 allocations when they become available in December 2013.

**Note:** Sector apportionments may not total precisely due to rounding.

**Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring**

Section 679.21(e) sets forth the BSAI PSC limits. Pursuant to § 679.21(e)(1)(iv) and (e)(2), the 2013 and 2014 BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Sections 679.21(e)(3)(i)(A)(*2*) and 679.21(e)(4)(i)(A) allocate 326 mt of the trawl halibut mortality limit and 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program.

Section 679.21(e)(4)(i) authorizes apportioning the non-trawl halibut PSC limit into PSC bycatch allowances among six fishery categories. Tables 11 and 12 list the fishery bycatch allowances for the trawl fisheries, and Table 13 lists the fishery bycatch allowances for the non-trawl fisheries.

Pursuant to section 3.6 of the FMP, the Council recommends, and NMFS agrees, that certain specified non-trawl fisheries be exempt from the halibut PSC limit. As in past years, after consulting with the Council, NMFS exempts pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions for the following reasons: (1) The pot gear fisheries have low halibut bycatch mortality; (2) NMFS estimates halibut mortality for the jig gear fleet to be negligible because of the small size of the fishery and the selectivity of the gear; and (3) the sablefish and halibut IFQ fisheries have low halibut bycatch mortality because the IFQ program requires legal-size halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ (subpart D of 50 CFR part 679). In 2012, total groundfish catch for the pot gear fishery in the BSAI was approximately 31,735 mt, with an associated halibut bycatch mortality of about 6 mt.

The 2012 jig gear fishery harvested about 108 mt of groundfish. Most vessels in the jig gear fleet are less than

60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, as mentioned above, NMFS estimates the jig gear sector will have a negligible amount of halibut bycatch mortality because of the selective nature of jig gear and the low mortality rate of halibut caught with jig gear and released.

Section 679.21(f)(2) annually allocates portions of either 47,591 or 60,000 Chinook salmon PSC among the AFA sectors, depending on past catch performance and on whether Chinook salmon bycatch incentive plan agreements are formed. If an AFA sector participates in an approved Chinook salmon bycatch incentive plan agreement, then NMFS will allocate a portion of the 60,000 PSC limit to that sector as specified in § 679.21(f)(3)(iii)(A). If no Chinook salmon bycatch incentive plan agreement is approved, or if the sector has exceeded its performance standard under § 679.21(f)(6), then NMFS will allocate a portion of the 47,591 Chinook salmon PSC limit to that sector, as specified in § 679.21(f)(3)(iii)(B). In 2013, the Chinook salmon PSC limit is 60,000 and the AFA sector Chinook salmon allocations are seasonally allocated with 70 percent of the allocation for the A season pollock fishery, and 30 percent of the allocation for the B season pollock fishery as stated in § 679.21(f)(3)(iii)(A). The basis for these PSC limits is described in detail in the final rule implementing management measures for Amendment 91 (75 FR 53026, August 30, 2010). NMFS publishes the approved Chinook salmon bycatch incentive plan agreements, 2013 allocations and reports at: *http://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/default.htm*.

Section 679.21(e)(1)(viii) specifies 700 fish as the 2013 and 2014 Chinook salmon PSC limit for the AI subarea pollock fishery. Section 679.21(e)(3)(i)(A)(*3*)(*i*), allocates 7.5 percent, or 53 Chinook salmon, to the AI subarea PSQ for the CDQ program, and allocates the remaining 647 Chinook salmon to the non-CDQ fisheries.

Section 679.21(e)(1)(vii) specifies 42,000 fish as the 2013 and 2014 non-Chinook salmon PSC limit in the Catcher Vessel Operational Area (CVOA). Section 679.21(e)(3)(i)(A)(*3*)(*ii*) allocates 10.7 percent, or 4,494 non-Chinook salmon in the CVOA as the PSQ for the CDQ program, and allocates the remaining 37,506 non-Chinook salmon in the CVOA as the PSC limit for the non-CDQ fisheries.

PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Section 679.21(e)(3)(i)(A)(*1*) allocates 10.7 percent from each trawl gear PSC limit specified for crab as a PSQ reserve for use by the groundfish CDQ program.

Based on the 2012 survey data, the red king crab mature female abundance is estimated at 21.1 million red king crabs, and the effective spawning biomass is estimated at 44.2 million lb (20,049 mt). Based on the criteria set out at § 679.21(e)(1)(i), the 2013 and 2014 PSC limit of red king crab in Zone 1 for trawl gear is 97,000 animals. This limit derives from the mature female abundance of more than 8.4 million king crab and the effective spawning biomass estimate of less than 55 million lb (24,948 mt).

Section 679.21(e)(3)(ii)(B)(*2*) establishes criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the RKCSS red king crab bycatch limit to 25 percent of the red king crab PSC limit, based on the need to optimize the groundfish harvest relative to red king crab bycatch. In December 2012, the Council recommended that the red king crab bycatch limit be equal to 25 percent of the red king crab PSC limit within the RKCSS (Table 8b). NMFS concurs with the Council's recommendation.

Based on 2012 survey data, Tanner crab (*Chionoecetes bairdi*) abundance is estimated at 711 million animals. Pursuant to criteria set out at § 679.21(e)(1)(ii), the calculated 2013 and 2014 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2. These limits derive from the *C. bairdi* crab abundance estimate being in excess of the 400 million animals for both the Zone 1 and Zone 2 allocations.

Pursuant to § 679.21(e)(1)(iii), the PSC limit for snow crab (*C. opilio*) is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the BS abundance index minus 150,000 crab. Based on the 2012 survey estimate of 9.401 billion animals, the calculated *C. opilio* crab PSC limit is 10,501,333 animals.

Pursuant to § 679.21(e)(1)(v), the PSC limit of Pacific herring caught while conducting any trawl operation for BSAI groundfish is 1 percent of the annual eastern BS herring biomass. The best estimate of 2013 and 2014 herring biomass is 264,802 mt. This amount was derived using 2012 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 2013 and 2014 is 2,648 mt for all trawl gear as listed in Tables 10 and 11.

Section 679.21(e)(3)(A) requires PSQ reserves to be subtracted from the total trawl PSC limits. The amounts of 2012 PSC limits assigned to the Amendment 80 and BSAI trawl limited access sectors are specified in Table 35 to part 679. The resulting allocation of PSC limit to CDQ PSQ, the Amendment 80 sector, and the BSAI trawl limited access fisheries are listed in Table 10. Pursuant to § 679.21(e)(1)(iv) and § 679.91(d) through (f), crab and halibut trawl PSC limits assigned to the Amendment 80 sector are then further allocated to Amendment 80 cooperatives as PSC cooperative quota as listed in Table 14. PSC cooperative quota assigned to Amendment 80 cooperatives is not allocated to specific fishery categories. In 2013, there are no vessels in the Amendment 80 limited access sector. The 2014 PSC allocations between Amendment 80 cooperatives and the Amendment 80 limited access sector will not be known until eligible participants apply for participation in the program by November 1, 2013. Section 679.21(e)(3)(i)(B) requires NMFS to apportion each trawl PSC limit not assigned to Amendment 80 cooperatives into PSC bycatch allowances for seven specified fishery categories.

Section 679.21(e)(5) authorizes NMFS, after consulting with the Council, to establish seasonal apportionments of PSC amounts for the BSAI trawl limited access and Amendment 80 limited access sectors in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are: (1) Seasonal distribution of prohibited species; (2) seasonal distribution of target groundfish species; (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass; (4) expected variations in bycatch rates throughout the year; (5) expected start of fishing effort; and (6) economic effects of seasonal PSC apportionments on industry sectors. The Council recommended and NMFS approves the seasonal PSC apportionments in Tables 12 and 13 to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria.

TABLE 10—FINAL 2013 AND 2014 APPORTIONMENT OF PROHIBITED SPECIES CATCH ALLOWANCES TO NON-TRAWL GEAR, THE CDQ PROGRAM, AMENDMENT 80, AND THE BSAI TRAWL LIMITED ACCESS SECTORS

| PSC species and area [1] | Total non-trawl PSC | Non-trawl PSC remaining after CDQ PSQ [2] | Total trawl PSC | Trawl PSC remaining after CDQ PSQ [2] | CDQ PSQ reserve [2] | Amendment 80 sector [3] | BSAI trawl limited access fishery |
|---|---|---|---|---|---|---|---|
| Halibut mortality (mt) | | | | | | | |
| BSAI | 900 | 832 | 3,675 | 3,349 | 393 | 2,325 | 875 |
| Herring (mt) BSAI | n/a | n/a | 2,648 | n/a | n/a | n/a | n/a |
| Red king crab (animals) | | | | | | | |
| Zone 1 | n/a | n/a | 97,000 | 86,621 | 10,379 | 43,293 | 26,489 |
| C. *opilio* (animals) | | | | | | | |
| COBLZ | n/a | n/a | 10,501,333 | 9,377,690 | 1,123,643 | 4,609,135 | 3,013,990 |
| C. *bairdi* crab (animals) | | | | | | | |
| Zone 1 | n/a | n/a | 980,000 | 875,140 | 104,860 | 368,521 | 411,228 |
| C. *bairdi* crab (animals) | | | | | | | |
| Zone 2 | n/a | n/a | 2,970,000 | 2,652,210 | 317,790 | 627,778 | 1,241,500 |

[1] Refer to § 679.2 for definitions of zones.

[2] Section 679.21(e)(3)(i)(A)(2) allocates 326 mt of the trawl halibut mortality limit and § 679.21(e)(4)(i)(A) allocates 7.5 percent, or 67 mt, of the non-trawl halibut mortality limit as the PSQ reserve for use by the groundfish CDQ program. The PSQ reserve for crab species is 10.7 percent of each crab PSC limit.

[3] The Amendment 80 program reduced apportionment of the trawl PSC limits by 150 mt for halibut mortality and 20 percent for crab. These reductions are not apportioned to other gear types or sectors.

**Note:** Sector apportionments may not total precisely due to rounding.

TABLE 11—FINAL 2013 AND 2014 HERRING AND RED KING CRAB SAVINGS SUBAREA PROHIBITED SPECIES CATCH ALLOWANCES FOR ALL TRAWL SECTORS

| Fishery Categories | Herring (mt) BSAI | Red king crab (animals) Zone 1 |
|---|---|---|
| Yellowfin sole | 180 | n/a |
| Rock sole/flathead sole/other flatfish [1] | 30 | n/a |
| Turbot/arrowtooth/sablefish [2] | 20 | n/a |
| Rockfish | 13 | n/a |
| Pacific cod | 40 | n/a |
| Midwater trawl pollock | 2,165 | n/a |
| Pollock/Atka mackerel/other species [3 4] | 200 | n/a |
| Red king crab savings subarea non-pelagic trawl gear [5] | n/a | 24,250 |
| Total trawl PSC | 2,648 | 97,000 |

[1] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), arrowtooth flounder, flathead sole, Greenland turbot, Kamchatka flounder, rock sole, and yellowfin sole.

[2] ''Arrowtooth flounder'' for PSC monitoring includes Kamchatka flounder.

[3] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.

[4] ''Other species'' for PSC monitoring includes skates, sculpins, sharks, squids, and octopuses.

[5] In December 2012 the Council recommended that the red king crab bycatch limit for non-pelagic trawl fisheries within the RKCSS be limited to 25 percent of the red king crab PSC allowance (see § 679.21(e)(3)(ii)(B)(*2*)).

**Note:** Species apportionments may not total precisely due to rounding.

TABLE 12—FINAL 2013 AND 2014 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL LIMITED ACCESS SECTOR

| BSAI trawl limited access fisheries | Prohibited species and area [1] | | | | |
|---|---|---|---|---|---|
| | Halibut mortality (mt) BSAI | Red king crab (animals) Zone 1 | *C. opilio* (animals) COBLZ | *C. bairdi* (animals) | |
| | | | | Zone 1 | Zone 2 |
| Yellowfin sole | 167 | 23,338 | 2,840,175 | 346,228 | 1,185,500 |
| Rock sole/flathead sole/other flatfish [2] | 0 | 0 | 0 | 0 | 0 |
| Turbot/arrowtooth/sablefish [3] | 0 | 0 | 0 | 0 | 0 |
| Rockfish April 15–December 31 | 5 | 0 | 4,828 | 0 | 1,000 |
| Pacific cod | 453 | 2,954 | 120,705 | 60,000 | 50,000 |
| Pollock/Atka mackerel/other species [4] | 250 | 197 | 48,282 | 5,000 | 5,000 |
| Total BSAI trawl limited access PSC | 875 | 26,489 | 3,013,990 | 411,228 | 1,241,500 |

[1] Refer to § 679.2 for definitions of areas.

[2] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.

[3] Arrowtooth flounder for PSC monitoring includes Kamchatka flounder.

[4] ''Other species'' for PSC monitoring includes skates, sculpins, sharks, squids, and octopuses.

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 13—FINAL 2013 AND 2014 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR NON-TRAWL FISHERIES

| Non-trawl fisheries | Catcher/processor | Catcher vessel |
|---|---|---|
| Pacific cod-Total | 760 | 15 |
| January 1–June 10 | 455 | 10 |
| June 10–August 15 | 190 | 3 |
| August 15–December 31 | 115 | 2 |
| Other non-trawl-Total | | 58 |
| May 1–December 31 | | 58 |
| Groundfish pot and jig | | Exempt |
| Sablefish hook-and-line | | Exempt |
| Total non-trawl PSC | | 833 |

**Note:** Seasonal or sector apportionments may not total precisely due to rounding.

TABLE 14—FINAL 2013 PROHIBITED SPECIES BYCATCH ALLOWANCE FOR THE BSAI AMENDMENT 80 COOPERATIVES

| Cooperative | Prohibited species and zones [1] | | | | |
|---|---|---|---|---|---|
| | Halibut mortality (mt) BSAI | Red king crab (animals) zone 1 | *C. opilio* (animals COBLZ | *C, baurdu* (animals) | |
| | | | | Zone 1 | Zone 2 |
| Alaska Seafood Cooperative | 1,609 | 29,484 | 2,975,772 | 259,427 | 433,149 |
| Alaska Groundfish Cooperative | 716 | 13,809 | 1,633,363 | 109,094 | 194,629 |

[1] Refer to § 679.2 for definitions of zones.
**Note:** Sector apportionments may not total precisely due to rounding.

**Halibut Discard Mortality Rates (DMR)**

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut bycatch rates, DMRs, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

NMFS approves the halibut DMRs developed and recommended by the International Pacific Halibut Commission (IPHC) and the Council for the 2013 and 2014 BSAI groundfish fisheries for use in monitoring the 2013 and 2014 halibut bycatch allowances (see Tables 10, 11, 12, 13, and 14). The IPHC developed these DMRs for the 2013 and 2014 BSAI fisheries using the 10-year mean DMRs for those fisheries. The IPHC will analyze observer data annually and recommend changes to the DMRs when a fishery DMR shows large variation from the mean. A discussion of the DMRs is available from the Council (see **ADDRESSES**). Table 15 lists the 2013 and 2014 DMRs.

TABLE 15—FINAL 2013 AND 2014 PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI

| Gear | Fishery | Halibut discard mortality rate (percent) |
|---|---|---|
| Non-CDQ hook-and-line | Greenland turbot | 13 |
| | Other species [1] | 9 |
| | Pacific cod | 9 |
| | Rockfish | 4 |
| Non-CDQ trawl | Arrowtooth flounder [2] | 76 |
| | Atka mackerel | 77 |
| | Flathead sole | 73 |
| | Greenland turbot | 64 |
| | Non-pelagic pollock | 77 |
| | Pelagic pollock | 88 |
| | Other flatfish [3] | 71 |
| | Other species [1] | 71 |
| | Pacific cod | 71 |
| | Rockfish | 79 |
| | Rock sole | 85 |
| | Sablefish | 75 |
| | Yellowfin sole | 83 |
| Non-CDQ Pot | Other species [1] | 8 |
| | Pacific cod | 8 |
| CDQ trawl | Atka mackerel | 86 |
| | Greenland turbot | 89 |
| | Flathead sole | 79 |
| | Non-pelagic pollock | 83 |
| | Pacific cod | 90 |
| | Pelagic pollock | 90 |
| | Rockfish | 80 |

TABLE 15—FINAL 2013 AND 2014 PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI—Continued

| Gear | Fishery | Halibut discard mortality rate (percent) |
|---|---|---|
| | Rock sole | 88 |
| | Yellowfin sole | 86 |
| CDQ hook-and-line | Greenland turbot | 4 |
| | Pacific cod | 10 |
| CDQ pot | Pacific cod | 8 |
| | Sablefish | 34 |

[1] "Other species" includes skates, sculpins, sharks, squids and octopuses.
[2] Arrowtooth flounder includes Kamchatka flounder.
[3] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.

**Directed Fishing Closures**

In accordance with § 679.20(d)(1)(i), the Regional Administrator may establish a DFA for a species or species group if the Regional Administrator determines that any allocation or apportionment of a target species has been or will be reached. If the Regional Administrator establishes a DFA, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (see § 697.20(d)(1)(iii)). Similarly, pursuant to § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab, or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

Based on historic catch patterns and anticipated fishing activity, the Regional Administrator has determined that the groundfish allocation amounts in Table 16 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2013 and 2014 fishing years. Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species and species groups in Table 10 as zero. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these sectors and species in the specified areas effective at 1200 hrs, A.l.t., March 1, 2013, through 2400 hrs, A.l.t., December 31, 2014. Also, for the BSAI trawl limited access sector, bycatch allowances of halibut, red king crab, *C. bairdi* crab, and *C. opilio* crab listed in Table 10 are insufficient to support directed fisheries. Therefore, in accordance with § 679.21(e)(7), NMFS is prohibiting directed fishing for these sectors and fishery categories in the specified areas effective at 1200 hrs, A.l.t., March 1, 2013, through 2400 hrs, A.l.t., December 31, 2014.

TABLE 16—2013 AND 2014 DIRECTED FISHING CLOSURES [1]

[Groundfish and halibut amounts are in metric tons. Crab amounts are in number of animals]

| Area | Sector | Species | 2013 Incidental catch allowance | 2014 Incidental catch allowance |
|---|---|---|---|---|
| Bogoslof District | All | Pollock | 100 | 100 |
| Aleutian Islands subarea | All | ICA pollock | 1,600 | 1,600 |
| | | "Other rockfish" [2] | 473 | 473 |
| Eastern Aleutian District/Bering Sea. | Non-amendment 80 and BSAI trawl limited access. | ICA Atka mackerel | 1,000 | 1,000 |
| Eastern Aleutian District/Bering Sea. | All | Rougheye rockfish | 169 | 189 |
| Eastern Aleutian District | Non-amendment 80 and BSAI trawl limited access. | ICA Pacific ocean perch | 200 | 200 |
| Central Aleutian District | Non-amendment 80 and BSAI trawl limited access. | ICA Atka mackerel | 75 | 75 |
| | | ICA Pacific ocean perch | 75 | 75 |
| Western Aleutian District | Non-amendment 80 and BSAI trawl limited access. | ICA Atka mackerel | 40 | 40 |
| | | ICA Pacific ocean perch | 10 | 10 |
| Central and Western Aleutian Districts. | All | Rougheye rockfish | 209 | 240 |
| Bering Sea subarea | All | Pacific ocean perch | 8,130 | 7,680 |
| | | "Other rockfish" [2] | 400 | 686 |
| | | ICA pollock | 33,669 | 33,669 |
| Bering Sea and Aleutian Islands | All | Northern rockfish | 3,000 | 3,000 |
| | | Shortraker rockfish | 370 | 370 |
| | | Skates | 24,000 | 25,000 |
| | | Sculpins | 5,600 | 5,600 |
| | | Sharks | 100 | 100 |
| | | Squids | 595 | 595 |
| | | Octopuses | 500 | 500 |
| | Hook-and-line and pot gear | ICA Pacific cod | 500 | 500 |
| | Non-amendment 80 | ICA flathead sole | 5,000 | 5,000 |
| | | ICA rock sole | 10,000 | 10,000 |

TABLE 16—2013 AND 2014 DIRECTED FISHING CLOSURES [1]—Continued

[Groundfish and halibut amounts are in metric tons. Crab amounts are in number of animals]

| Area | Sector | Species | 2013 Incidental catch allowance | 2014 Incidental catch allowance |
|---|---|---|---|---|
| | Non-amendment 80 and BSAI trawl limited access. | ICA yellowfin sole | 2,000 | 2,000 |
| | BSAI trawl limited access | Rock sole/flathead sole/other flatfish—halibut mortality, red king crab Zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2. | 0 | 0 |
| | | Turbot/arrowtooth/sablefish—halibut mortality, red king crab Zone 1, *C. opilio* COBLZ, *C. bairdi* Zone 1 and 2. | 0 | 0 |
| | | Rockfish—red king crab Zone 1 | 0 | 0 |

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.
[2] ''Other rockfish'' includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern rockfish, dark rockfish, shortraker rockfish, and rougheye rockfish.

Closures implemented under the 2012 and 2013 BSAI harvest specifications for groundfish (77 FR 10669, February 23, 2012) remain effective under authority of these final 2013 and 2014 harvest specifications, and are posted at the following Web sites: *http://alaskafisheries.noaa.gov/index/infobulletins/infobulletins.asp?Yr=2013* and *http://alaskafisheries.noaa.gov/2013/status.htm*. While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679.

**Listed AFA Catcher/Processor Sideboard Limits**

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of listed AFA C/Ps to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. These restrictions are set out as ''sideboard'' limits on catch. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Table 17 lists the 2013 and 2014 C/P sideboard limits.

All harvest of groundfish sideboard species by listed AFA C/Ps, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 17. However, groundfish sideboard species that are delivered to listed AFA C/Ps by CVs will not be deducted from the 2013 and 2014 sideboard limits for the listed AFA C/Ps.

Section 679.64(a)(2) and Tables 40 and 41 of part 679 establish a formula for calculating PSC sideboard limits for listed AFA C/Ps. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007), and in the proposed rule (77 FR 72791).

PSC species listed in Table 18 that are caught by listed AFA C/Ps participating in any groundfish fishery other than pollock will accrue against the 2013 and 2014 PSC sideboard limits for the listed AFA C/Ps. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA C/Ps once a 2013 or 2014 PSC sideboard limit listed in Table 18 is reached.

Crab or halibut PSC caught by listed AFA C/Ps while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 17—FINAL 2013 AND 2014 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

| Target species | Area/season | 1995–1997 | | | 2013 ITAC Available to trawl C/Ps [1] | 2013 AFA C/P Sideboard limit | 2014 ITAC Available to trawl C/Ps [1] | 2014 AFA C/P Sideboard limit |
|---|---|---|---|---|---|---|---|---|
| | | Retained catch | Total catch | Ratio of retained catch to total catch | | | | |
| Sablefish trawl | BS | 8 | 497 | 0.016 | 672 | 11 | 629 | 10 |
| | AI | 0 | 145 | 0 | 455 | 0 | 428 | 0 |
| Atka mackerel | Central AI A season [2] | n/a | n/a | 0.115 | 3,358 | 386 | 3,295 | 379 |
| | Central AI B season [2] | n/a | n/a | 0.115 | 3,358 | 386 | 3,295 | 379 |
| | Western AI A season [2] | n/a | n/a | 0.2 | 670 | 134 | 670 | 134 |
| | Western AI B season [2] | n/a | n/a | 0.2 | 670 | 134 | 670 | 134 |
| Rock sole | BSAI | 6,317 | 169,362 | 0.037 | 82,495 | 3,052 | 82,156 | 3,040 |
| Greenland turbot | BS | 121 | 17,305 | 0.007 | 1,369 | 10 | 1,760 | 12 |

TABLE 17—FINAL 2013 AND 2014 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS—Continued

[Amounts are in metric tons]

| Target species | Area/season | 1995–1997 | | | 2013 ITAC Available to trawl C/Ps [1] | 2013 AFA C/P Sideboard limit | 2014 ITAC Available to trawl C/Ps [1] | 2014 AFA C/P Sideboard limit |
|---|---|---|---|---|---|---|---|---|
| | | Retained catch | Total catch | Ratio of retained catch to total catch | | | | |
| | AI | 23 | 4,987 | 0.005 | 383 | 2 | 493 | 2 |
| Arrowtooth flounder | BSAI | 76 | 33,987 | 0.002 | 21,250 | 43 | 21,250 | 43 |
| Kamchatka flounder. | BSAI | 76 | 33,987 | 0.002 | 8,500 | 17 | 8,500 | 17 |
| Flathead sole | BSAI | 1,925 | 52,755 | 0.036 | 20,270 | 730 | 20,131 | 725 |
| Alaska plaice | BSAI | 14 | 9,438 | 0.001 | 17,000 | 17 | 17,000 | 17 |
| Other flatfish | BSAI | 3,058 | 52,298 | 0.058 | 2,975 | 173 | 3,400 | 197 |
| Pacific ocean perch. | BS | 12 | 4,879 | 0.002 | 8,130 | 16 | 7,680 | 15 |
| | Eastern AI | 125 | 6,179 | 0.02 | 8,742 | 175 | 8,251 | 165 |
| | Central AI | 3 | 5,698 | 0.001 | 6,233 | 6 | 5,885 | 6 |
| | Western AI | 54 | 13,598 | 0.004 | 9,109 | 36 | 8,564 | 34 |
| Northern rockfish | BSAI | 91 | 13,040 | 0.007 | 3,000 | 21 | 3,000 | 21 |
| Shortraker rockfish | BSAI | 50 | 2,811 | 0.018 | 370 | 7 | 370 | 7 |
| Rougheye rockfish | EBS/EAI | 50 | 2,811 | 0.018 | 169 | 3 | 189 | 3 |
| | CAI/WAI | 50 | 2,811 | 0.018 | 209 | 4 | 240 | 4 |
| Other rockfish | BS | 18 | 621 | 0.029 | 400 | 12 | 686 | 20 |
| | AI | 22 | 806 | 0.027 | 473 | 13 | 473 | 13 |
| Skates | BSAI | 553 | 68,672 | 0.008 | 24,000 | 192 | 25,000 | 200 |
| Sculpins | BSAI | 553 | 68,672 | 0.008 | 5,600 | 45 | 5,600 | 45 |
| Sharks | BSAI | 553 | 68,672 | 0.008 | 100 | 1 | 100 | 1 |
| Squids | BSAI | 73 | 3,328 | 0.022 | 595 | 13 | 595 | 13 |
| Octopuses | BSAI | 553 | 68,672 | 0.008 | 500 | 4 | 500 | 4 |

[1] Aleutian Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, rock sole, and yellowfin sole are multiplied by the remainder of the TAC after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

[2] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual ITAC specified for the Western Aleutian District, and 11.5 percent of the annual ITAC specified for the Central Aleutian District.

TABLE 18—FINAL 2013 AND 2014 BSAI AFA LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS

| PSC species and area [1] | Ratio of PSC catch to total PSC | 2013 and 2014 PSC available to trawl vessels after subtraction of PSQ [2] | 2013 and 2014 catcher/processor sideboard limit [2] |
|---|---|---|---|
| Halibut mortality BSAI | n/a | n/a | 286 |
| Red king crab zone 1 | 0.007 | 86,621 | 606 |
| *C. opilio* (COBLZ) | 0.153 | 9,377,690 | 1,434,787 |
| C. bairdi Zone 1 | 0.14 | 875,140 | 122,520 |
| C. bairdi Zone 2 | 0.05 | 2,652,210 | 132,611 |

[1] Refer to § 679.2 for definitions of areas.

[2] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

**AFA Catcher Vessel Sideboard Limits**

Pursuant to § 679.64(a), the Regional Administrator is responsible for restricting the ability of AFA CVs to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes a formula for setting AFA CV groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the AFA (67 FR 79692, December 30, 2002) and Amendment 80 (72 FR 52668, September 14, 2007). Tables 19 and 20 list the 2013 and 2014 AFA CV sideboard limits.

All catch of groundfish sideboard species made by non-exempt AFA CVs, whether as targeted catch or incidental catch, will be deducted from the 2013 and 2014 sideboard limits listed in Table 19.

TABLE 19—FINAL 2013 AND 2014 AMERICAN FISHERIES ACT CATCHER VESSEL BSAI GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

| Species/gear | Fishery by area/season | Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC | 2013 initial TAC [1] | 2013 AFA catcher vessel sideboard limits | 2014 initial TAC [1] | 2014 AFA catcher vessel sideboard limits |
|---|---|---|---|---|---|---|
| Pacific cod/Jig gear | BSAI | 0 | n/a | 0 | n/a | 0 |
| Pacific cod/Hook-and-line CV. | BSAI Jan 1–Jun 10 | 0.0006 | 236 | 0 | 237 | 0 |
| | BSAI Jun 10–Dec 31 | 0.0006 | 227 | 0 | 228 | 0 |
| Pacific cod pot gear CV | BSAI Jan 1–Jun 10 | 0.0006 | 9,911 | 6 | 9,945 | 6 |
| | BSAI Sept 1–Dec 31 | 0.0006 | 9,523 | 6 | 9,555 | 6 |
| Pacific cod CV < 60 feet LOA using hook-and-line or pot gear. | BSAI | 0.0006 | 4,627 | 3 | 4,643 | 3 |
| Pacific cod trawl gear CV | BSAI Jan 20–Apr 1 | 0.8609 | 37,971 | 32,689 | 38,099 | 32,799 |
| | BSAI Apr 1–Jun 10 | 0.8609 | 5,644 | 4,859 | 5,663 | 4,875 |
| | BSAI Jun 10–Nov 1 | 0.8609 | 7,697 | 6,626 | 7,723 | 6,649 |
| Sablefish trawl gear | BS | 0.0906 | 672 | 61 | 612 | 55 |
| | AI | 0.0645 | 455 | 29 | 428 | 28 |
| Atka mackerel | Eastern AI/BS Jan 1–Jun 10. | 0.0032 | 7,546 | 24 | 7,367 | 24 |
| | Eastern AI/BS Jun 10–Nov 1. | 0.0032 | 7,546 | 24 | 7,367 | 24 |
| | Central AI Jan 1–Jun 10 | 0.0001 | 3,358 | 0 | 3,295 | 0 |
| | Central AI Jun 10–Nov 1 | 0.0001 | 3,358 | 0 | 3,295 | 0 |
| | Western AI Jan 1–Jun 10 | 0 | 670 | 0 | 670 | 0 |
| | Western AI Jun 10–Nov 1 | 0 | 670 | 0 | 670 | 0 |
| Rock sole | BSAI | 0.0341 | 82,495 | 2,813 | 82,156 | 2,802 |
| Greenland turbot | BS | 0.0645 | 1,369 | 88 | 1,760 | 114 |
| | AI | 0.0205 | 383 | 8 | 493 | 10 |
| Arrowtooth flounder | BSAI | 0.069 | 21,250 | 1,466 | 21,250 | 1,466 |
| Kamchatka flounder | BSAI | 0.069 | 8,500 | 587 | 8,500 | 587 |
| Alaska plaice | BSAI | 0.0441 | 17,000 | 750 | 17,000 | 750 |
| Other flatfish | BSAI | 0.0441 | 2,975 | 131 | 3,400 | 150 |
| Flathead sole | BS | 0.0505 | 20,270 | 1,024 | 20,131 | 1,017 |
| Pacific ocean perch | BS | 0.1 | 8,130 | 813 | 7,680 | 768 |
| | Eastern AI | 0.0077 | 8,742 | 67 | 8,251 | 64 |
| | Central AI | 0.0025 | 6,233 | 16 | 5,885 | 15 |
| | Western AI | 0 | n/a | 0 | n/a | 0 |
| Northern rockfish | BSAI | 0.0084 | 3,000 | 25 | 3,000 | 25 |
| Shortraker rockfish | BSAI | 0.0037 | 370 | 1 | 370 | 1 |
| Rougheye rockfish | EBS/EAI | 0.0037 | 169 | 1 | 189 | 1 |
| | CAI/WAI | 0.0037 | 209 | 1 | 240 | 1 |
| Other rockfish | BS | 0.0048 | 400 | 2 | 686 | 3 |
| | AI | 0.0095 | 473 | 4 | 473 | 4 |
| Skates | BSAI | 0.0541 | 24,000 | 1,298 | 25,000 | 1,353 |
| Sculpins | BSAI | 0.0541 | 5,600 | 303 | 5,600 | 303 |
| Sharks | BSAI | 0.0541 | 100 | 5 | 100 | 5 |
| Squids | BSAI | 0.3827 | 595 | 228 | 595 | 228 |
| Octopuses | BSAI | 0.0541 | 500 | 27 | 500 | 27 |

[1] Aleutians Islands Pacific ocean perch, and BSAI Atka mackerel, flathead sole, and rock sole are multiplied by the remainder of the TAC of that species after the subtraction of the CDQ reserve under § 679.20(b)(1)(ii)(C).

Halibut and crab PSC limits listed in Table 20 that are caught by AFA CVs participating in any groundfish fishery for groundfish other than pollock will accrue against the 2013 and 2014 PSC sideboard limits for the AFA CVs. Sections 679.21(d)(8) and 679.21(e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA CVs once a 2013 or 2014 PSC sideboard limit listed in Table 20 is reached. The PSC that is caught by AFA CVs while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 20—FINAL 2013 AND 2014 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]

| PSC species and area [1] | Target fishery category [2] | AFA catcher vessel PSC sideboard limit ratio | 2013 and 2014 PSC limit after subtraction of PSQ reserves [3] | 2013 and 2014 AFA catcher vessel PSC sideboard limit [3] |
|---|---|---|---|---|
| Halibut | Pacific cod trawl | n/a | n/a | 887 |

TABLE 20—FINAL 2013 AND 2014 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI [1]—Continued

| PSC species and area [1] | Target fishery category [2] | AFA catcher vessel PSC sideboard limit ratio | 2013 and 2014 PSC limit after subtraction of PSQ reserves [3] | 2013 and 2014 AFA catcher vessel PSC sideboard limit [3] |
|---|---|---|---|---|
| | Pacific cod hook-and-line or pot | n/a | n/a | 2 |
| | Yellowfin sole total | n/a | n/a | 101 |
| | Rock sole/flathead sole/other flatfish [4] | n/a | n/a | 228 |
| | Greenland turbot/arrowtooth/sablefish [5] | n/a | n/a | 0 |
| | Rockfish | n/a | n/a | 2 |
| | Pollock/Atka mackerel/other species [6] | n/a | n/a | 5 |
| Red king crab Zone 1 | n/a | 0.299 | 86,621 | 25,900 |
| *C. opilio* COBLZ | n/a | 0.168 | 9,377,690 | 1,575,452 |
| *C. bairdi* Zone 1 | n/a | 0.33 | 875,140 | 288,796 |
| *C. bairdi* Zone 2 | n/a | 0.186 | 2,652,210 | 493,311 |

[1] Refer to § 679.2 for definitions of areas.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[4] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.
[5] Arrowtooth for PSC monitoring includes Kamchatka flounder.
[6] ''Other species'' for PSC monitoring includes skates, sculpins, sharks, squids, and octopuses.

**AFA Catcher/Processor and Catcher Vessel Sideboard Directed Fishing Closures**

Based upon historical catch patterns, the Regional Administrator has determined that many of the AFA C/P and CV sideboard limits listed in Tables 21 and 22 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2013 and 2014 fishing years. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 21 and 22 as DFAs. Because many of these DFAs will be reached before the end of the year, the Regional Administrator has determined, in accordance with § 679.20(d)(1)(iii), that NMFS is prohibiting directed fishing by listed AFA C/Ps for the species in the specified areas set out in Table 21, and directed fishing by non-exempt AFA CVs for the species in the specified areas set out in Table 22.

TABLE 21—FINAL 2013 AND 2014 AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

| Species | Area | Gear types | 2013 sideboard limit | 2014 sideboard limit |
|---|---|---|---|---|
| Sablefish trawl | BS | trawl | 11 | 10 |
| | AI | trawl | 0 | 0 |
| Rock sole | BSAI | all | 3,052 | 3,040 |
| Greenland turbot | BS | all | 10 | 12 |
| | AI | all | 2 | 2 |
| Arrowtooth flounder | BSAI | all | 43 | 43 |
| Kamchatka flounder | BSAI | all | 17 | 17 |
| Alaska plaice | BSAI | all | 17 | 17 |
| Other flatfish [2] | BSAI | all | 173 | 197 |
| Flathead sole | BSAI | all | 730 | 725 |
| Pacific ocean perch | BS | all | 16 | 15 |
| | Eastern AI | all | 175 | 165 |
| | Central AI | all | 6 | 6 |
| | Western AI | all | 36 | 34 |
| Northern rockfish | BSAI | all | 21 | 21 |
| Shortraker rockfish | BSAI | all | 7 | 7 |
| Rougheye rockfish | EBS/EAI | all | 3 | 3 |
| | CAI/WAI | all | 4 | 4 |
| Other rockfish [3] | BS | all | 12 | 20 |
| | AI | all | 13 | 13 |
| Skates | BSAI | all | 192 | 200 |
| Sculpins | BSAI | all | 45 | 45 |
| Sharks | BSAI | all | 1 | 1 |
| Squids | BSAI | all | 13 | 13 |
| Octopuses | BSAI | all | 4 | 4 |

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.
[2] ''Other flatfish'' includes all flatfish species, except for halibut, Alaska plaice, flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.
[3] ''Other rockfish'' includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern rockfish, dark rockfish, shortraker rockfish, and rougheye rockfish.

TABLE 22—FINAL 2013 AND 2014 AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES [1]

[Amounts are in metric tons]

| Species | Area | Gear types | 2013 sideboard limit | 2014 sideboard limit |
|---|---|---|---|---|
| Pacific cod | BSAI | hook-and-line | 0 | 0 |
| | BSAI | pot | 12 | 12 |
| | BSAI | CV< 60 feet LOA | 3 | 3 |
| | BSAI | jig | 0 | 0 |
| Sablefish | BS | trawl | 61 | 55 |
| | AI | trawl | 29 | 28 |
| Atka mackerel | Eastern AI/BS | all | 48 | 48 |
| | Central AI | all | 0 | 0 |
| | Western AI | all | 0 | 0 |
| Greenland turbot | BS | all | 88 | 114 |
| | AI | all | 8 | 10 |
| Arrowtooth flounder | BSAI | all | 1,466 | 1,466 |
| Kamchatka flounder | BSAI | all | 587 | 587 |
| Alaska plaice | BSAI | all | 750 | 750 |
| Other flatfish [2] | BSAI | all | 131 | 150 |
| Flathead sole | BSAI | all | 1,024 | 1,017 |
| Rock sole | BSAI | all | 2,813 | 2,802 |
| Pacific ocean perch | BS | all | 813 | 768 |
| | Eastern AI | all | 67 | 64 |
| | Central AI | all | 16 | 15 |
| | Western AI | all | 0 | 0 |
| Northern rockfish | BSAI | all | 25 | 25 |
| Shortraker rockfish | BSAI | all | 1 | 1 |
| Rougheye rockfish | BS/EAI | all | 1 | 1 |
| | CAI/WAI | all | 1 | 1 |
| Other rockfish [3] | BS | all | 2 | 3 |
| | AI | all | 4 | 4 |
| Skates | BSAI | All | 1,298 | 1,353 |
| Sculpins | BSAI | all | 303 | 303 |
| Sharks | BSAI | all | 5 | 5 |
| Squids | BSAI | all | 228 | 228 |
| Octopuses | BSAI | all | 27 | 27 |

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679.

[2] ''Other flatfish'' includes all flatfish species, except for halibut, Alaska plaice, flathead sole, Greenland turbot, rock sole, yellowfin sole, Kamchatka flounder, and arrowtooth flounder.

[3] ''Other rockfish'' includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern rockfish, dark rockfish, shortraker rockfish, and rougheye rockfish.

**Response to Comments**

NMFS received 2 letters with five comments.

*Comment 1:* Due to concerns that the biomass of the Aleutian Islands Pacific cod stock may be declining and that there is a possibility that this stock is overfished, NMFS should work with the Council to separate the Aleutian Island Pacific cod management from the Bering Sea Pacific cod management.

*Response:* The Bering Sea and Aleutian Islands 2013 and 2014 OFL and ABC for Pacific cod are set based upon recommendations from the Plan Team and the SSC. Based upon the best available science, the SSC recommended OFL and ABC limits for the BSAI Pacific cod stock and did not believe that a separate OFL and ABC was warranted for 2013 and 2014. Based on the 2012 Pacific cod stock assessment, the 2013 and 2014 OFL and ABC for BSAI wide Pacific cod stock is not overfished or experiencing overfishing. If the SSC does recommend separate Aleutian Island Pacific cod OFLs and ABCs, NMFS will work with the Council to implement SSC recommendations.

*Comment 2:* There should be an exemption in the groundfish harvest specifications for small non-commerical vessels.

*Response:* The groundfish harvest specifications regulations that implement the FMP govern commercial fishing for groundfish in the BSAI by vessels of the United States. The groundfish harvest specifications are for commercial fishing activities. Non-commercial fishing activities are outside of the scope of this action.

*Comment 3:* The BSAI groundfish harvest specifications should be more concise.

*Response:* NMFS agrees that the groundfish harvest specifications should be concise to the extent that it is practicable. However, NMFS believes that the 2013 and 2014 groundfish harvest specifications are concise to the extent practicable.

*Comment 4:* NMFS should include harvesting capacity information in the BSAI groundfish harvest specifications and elaborate on the effects of these harvest specifications upon the fishing capacity.

*Response:* The most recent systematic assessment of fishing capacity for the BSAI groundfish fishery is Appendix 9 to the 2008 National Assessment of Excess Harvesting Capacity in Federally Managed Fisheries (*http://spo.nmfs.noaa.gov/tm/spo93.pdf*), which provides information for the year 2004. That assessment found that the catch of all BSAI groundfish in 2004 was 2 million mt, and that the fleet had a capacity to take 2.9 million mt. Although estimated capacity exceeded catch by about 0.9 million mt, about 0.8 million mt of this excess capacity was concentrated in one fishery for pollock (pages 333–334). There is considerable stability in the BSAI harvest

specifications from year to year, not least because the total BSAI TAC is normally set at the statutory optimum yield limit of 2 million mt established by the Consolidated Appropriations Act of 2004, Public Law 108–199, Title VIII, § 803(c), and identified by the BSAI FMP. While individual species TACs vary from year to year, and new directed fisheries and the associated TAC may develop over time, fishing operators are aware of these variations, and are able to make operating plans that take this uncertainty into account. Therefore, NMFS does not expect that the 2013 and 2014 harvest specifications have any new elements that will limit harvesting capacity below the 2 million mt optimum yield limit or encourage overcapacity. NMFS notes that ongoing rationalization efforts in this fishery increase the tools available to industry to minimize the adverse economic impacts of excess capacity. Since the 2004 capacity estimates were made, NMFS implemented the Amendment 80 Program in 2008 (72 FR 52668), and the freezer longline sector formed a voluntary cooperative in 2010.

*Comment 5:* NMFS should move away from a single-species approach in setting OFLs and ABCs, and move towards an ecosystem-based management.

*Response:* NMFS agrees that there is a need to incorporate more ecosystem-based management in setting OFLs and ABCs to the extent that information is available. A goal of NMFS is to provide stronger links between fishery management and ecosystem research. The Plan Team has created ecosystem indicators with the goals of:

1. Maintaining biodiversity consistent with natural evolutionary and ecological processes, including dynamic change and variability.

2. Maintaining and restoring habitats essential for fish and their prey.

3. Maintaining system sustainability and sustainable yields for human consumption and non-extractive uses.

These indices are maintained in the SAFE report (see **ADDRESSES**), and each stock assessment addresses ecosystem considerations. This information is used as a component in setting annual OFLs and ABCs. However, NMFS believes the understanding of ecosystem-based management is currently insufficient to eliminate the need to set OFLs and ABCs using a single species approach.

**Classification**

NMFS has determined that these final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Orders 12866 and 13563.

NMFS prepared an EIS that covers this action (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the Record of Decision (ROD) for the EIS. In January 2013, NMFS prepared a Supplemental Information Report (SIR) for this action. Copies of the EIS, ROD, and SIR for this action are available from NMFS (see **ADDRESSES**). The EIS analyzes the environmental consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. The EIS found no significant environmental consequences of this action and its alternatives. The SIR evaluates the need to prepare a Supplemental EIS (SEIS) for the 2013 and 2014 groundfish harvest specifications.

A SEIS should be prepared if (1) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)(1)). After reviewing the information contained in the SIR and SAFE reports, the Regional Administrator has determined that (1) approval of the 2013 and 2014 harvest specifications, which were set according to the preferred harvest strategy in the EIS, do not constitute a change in the action; and (2) there are no significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts. Additionally, the 2013 and 2014 harvest specifications will result in environmental impacts within the scope of those analyzed and disclosed in the EIS. Therefore, supplemental National Environmental Policy Act documentation is not necessary to implement the 2013 and 2014 harvest specifications.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.,* a FRFA was prepared for this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), and includes a summary of the significant issues raised by public comments in response to the IRFA, as well as NMFS' responses to those comments. A summary of the analyses completed to support the action is also included in the FRFA.

A copy of the FRFA prepared for this final rule is available from NMFS (see **ADDRESSES**). A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 6, 2012 (77 FR 72791). The rule was accompanied by an IRFA, which was summarized in the proposed rule. The comment period closed on January 7, 2013. No comments were received on the IRFA.

The entities directly regulated by this action are those that receive allocations of groundfish in the EEZ of the BSAI, and in parallel fisheries within State of Alaska waters, during the annual harvest specifications process. These directly regulated entities include the groundfish CVs and C/Ps active in these areas. Direct allocations of groundfish are also made to certain organizations, including the CDQ groups, AFA C/P and inshore CV sectors, Aleut Corporation, and Amendment 80 cooperatives. These entities are, therefore, also considered directly regulated.

According to the Small Business Administration, a small entity engaged in fishing activities is one that is not dominant in its field, and individually has annual revenues of $4 million or less. In 2011, there were 216 individual catcher vessels with total gross revenues less than or equal to $4 million. Many of these vessels are members in AFA inshore pollock cooperatives. However, vessels that participate in these cooperatives are considered to be large entities within the meaning of the RFA. After accounting for membership in these cooperatives, there are an estimated 112 small CVs remaining in the BSAI.

In 2011, 12 C/Ps grossed less than $4 million. Some of these vessels were affiliated through ownership by the same business firm. By 2011, the vessels in this group were also affiliated through membership in two cooperatives (the Amendment 80 ''Best Use'' cooperative, or the Freezer Longline Conservation Cooperative (FLCC)). Applying the 2011 firm and cooperative affiliations to these vessels, NMFS estimates that these 12 vessels currently represent six small entities.

Through the CDQ program, the Council and NMFS allocate a portion of the BSAI groundfish TACs, and halibut and crab PSC limits, to 65 eligible Western Alaska communities. These communities work through six non-profit CDQ groups, and are required to use the proceeds from the CDQ allocations to start or support activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ groups receive

allocations through the harvest specifications process, and are directly regulated by this action, but the 65 communities are not directly regulated. Because they are nonprofit entities that are independently owned and operated, and are not dominant in their field, the CDQ groups are considered small entities for RFA purposes.

The AFA and Amendment 80 fisheries cooperatives are directly regulated because they receive allocations of TAC through the harvest specifications process. However, the FLCC, a voluntary private cooperative that became fully effective in 2010, is not considered to be directly regulated. The FLCC manages a catch share program among its members, but it does not receive an allocation under the harvest specifications. NMFS allocates TAC to the freezer longline sector, and the cooperative members voluntarily allocate this TAC among themselves via the FLCC. The AFA and Amendment 80 cooperatives are large entities, since they are affiliated with firms with joint revenues of more than $4 million.

The Aleut Corporation is an Alaska Native Corporation that receives an allocation of pollock in the Aleutian Islands. The Aleut Corporation is a holding company and evaluated according to the Small Business Administration criteria for Office or Other Holding Companies, at 13 CFR 121.201, which uses a threshold of $6 million gross annual receipts threshold for small entities. The Aleut Corporation revenues exceed this threshold, and the Aleut Corporation is considered to be a large entity. This determination follows the analysis in the RFA certification for BSAI FMP.

This action does not modify recordkeeping or reporting requirements.

The significant alternatives were those considered as alternative harvest strategies when the Council selected its preferred harvest strategy in December 2006. These included the following:

- Alternative 1: Set TAC to produce fishing mortality rates, *F,* that are equal to *maxFABC,* unless the sum of the TAC is constrained by the OY established in the FMPs. This is equivalent to setting TAC to produce harvest levels equal to the maximum permissible ABC, as constrained by OY. The term ''*maxFABC''* refers to the maximum permissible value of *FABC* under Amendment 56 to the groundfish FMPs. Historically, the TAC has been set at or below the ABC; therefore, this alternative represents a likely upper limit for setting the TAC within the OY and ABC limits.
- Alternative 3: For species in Tiers 1, 2, and 3, set TAC to produce F equal to the most recent 5-year average actual *F.* For species in Tiers 4, 5, and 6, set TAC equal to the most recent 5-year average actual catch. For stocks with a high level of scientific information, TAC would be set to produce harvest levels equal to the most recent 5-year average actual fishing mortality rates. For stocks with insufficient scientific information, TAC would be set equal to the most recent 5-year average actual catch. This alternative recognizes that for some stocks, catches may fall well below ABC, and recent average F may provide a better indicator of actual *F* than *FABC* does.
- Alternative 4: (1) Set TAC for rockfish species in Tier 3 at F75%. Set TAC for rockfish species in Tier 5 at F=0.5M. Set spatially explicit TAC for shortraker and rougheye rockfish in the BSAI. (2) Taking the rockfish TAC as calculated above, reduce all other TAC by a proportion that does not vary across species, so that the sum of all TAC, including rockfish TAC, is equal to the lower bound of the area OY (1,400,000 mt in the BSAI). This alternative sets conservative and spatially explicit TAC for rockfish species that are long-lived and late to mature, and sets conservative TAC for the other groundfish species.
- Alternative 5: Set TAC at zero.

Alternative 2 is the preferred alternative chosen by the Council:

Set TAC that fall within the range of ABC recommended through the Council harvest specifications process and TACs recommended by the Council. Under this scenario, *F* is set equal to a constant fraction of *maxFABC.* The recommended fractions of *maxFABC* may vary among species or stocks, based on other considerations unique to each. This is the method for determining TAC that has been used in the past.

Alternatives 1, 3, 4, and 5 do not meet the objectives of this action, although they have a smaller adverse economic impact on small entities than the preferred alternative. The Council rejected these alternatives as harvest strategies in 2006, and the Secretary of Commerce did so in 2007. Alternative 1 would lead to TAC limits whose sum exceeds the fishery OY, which is set out in statute and the FMP. As shown in Table 1, the sum of ABCs in 2013 and 2014 would be 2,639,317 and 2,697,498 million mt, respectively. Both of these are substantially in excess of the fishery OY for the BSAI. This result would be inconsistent with the objectives of this action, in that it would violate the Consolidated Appropriations Act of 2004, Pub. L. No. 108–199, Sec. 803(c), and the FMP for the BSAI groundfish fishery, which both set a 2,000,000 mt maximum harvest for BSAI groundfish.

Alternative 3 selects harvest rates based on the most recent 5 years' worth of harvest rates (for species in Tiers 1 through 3) or for the most recent 5 years' worth of harvests (for species in Tiers 4 through 6). This alternative is also inconsistent with the objectives of this action, because it does not take into account the most recent biological information for this fishery.

Alternative 4 would lead to significantly lower harvests of all species to reduce TAC from the upper end of the OY range in the BSAI, to its lower end. This result would lead to significant reductions in harvests of species by small entities. While reductions of this size could be associated with offsetting price increases, the size of these increases is very uncertain, and NMFS has no confidence that they would be sufficient to offset the volume decreases and leave revenues unchanged. Thus, this action would have an adverse economic impact on small entities, compared to the preferred alternative.

Alternative 5, which sets all harvests equal to zero, may also address conservation issues, but would have a significant adverse economic impact on small entities.

Impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the EIS (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effectiveness for this rule, because delaying this rule is contrary to the public interest. Plan Team review occurred in November 2012, and Council consideration and recommendations occurred in December 2012. Accordingly, NMFS review could not begin until after the December 2012 Council meeting, and after the public had time to comment upon the proposed action. If this rule's effectiveness is delayed, fisheries that might otherwise remain open under these rules may prematurely close based on the lower 2012 and 2013 harvest specifications (77 FR 10669, February 23, 2012). If implemented immediately, this rule would allow these fisheries to continue fishing without worrying about a potential closure, because the new TAC limits are higher than the ones under which they are currently fishing. Certain fisheries, such as those for pollock and Pacific cod are intensive, fast-paced fisheries. Other fisheries, such as those for flatfish, rockfish, skates, sculpins, sharks, and octopuses,

are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in these fisheries. Any delay in allocating the final TAC limits in these fisheries would cause confusion to the industry and potential economic harm through unnecessary discards. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing up fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries and causing them to close at an accelerated pace.

Additionally, in fisheries subject to declining sideboards, delaying this rule's effectiveness could allow some vessels to inadvertently reach or exceed their new sideboard levels. Because sideboards are intended to protect traditional fisheries in other sectors, allowing one sector to exceed its new sideboards by delaying this rule's effectiveness would effectively reduce the available catch for sectors without sideboard limits. Moreover, the new TAC and sideboard limits protect the fisheries from being overfished. Thus, the delay is contrary to the public interest in protecting traditional fisheries and fish stocks.

If the final harvest specifications are not effective by March 23, 2013, which is the start of the 2013 Pacific halibut season as specified by the IPHC, the hook-and-line sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. Delayed effectiveness of this action would result in confusion for sablefish harvesters and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both hook-and-line sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of the final 2013 and 2014 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season. Also, the immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly true of those species which have lower 2013 ABC and TAC limits than those established in the 2012 and 2013 harvest specifications (77 FR 10669, February 23, 2012). Immediate effectiveness also would give the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TAC limits. Therefore, NMFS finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

## Small Entity Compliance Guide

This final rule is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2013 and 2014 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2013 and 2014 fishing years and to accomplish the goals and objectives of the FMP. This action directly affects all fishermen who participate in the BSAI fisheries. The specific amounts of OFL, ABC, TAC, and PSC are provided in tables to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

**Authority:** 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

Dated: February 25, 2013.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2013–04822 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 78, No. 41
Friday, March 1, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 25

**[Docket No. FAA–2013–0109; Notice No. 25–137]**

**RIN 2120–AK13**

## Harmonization of Airworthiness Standards—Miscellaneous Structures Requirements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend certain airworthiness regulations for transport category airplanes, based on recommendations from the Aviation Rulemaking Advisory Committee (ARAC). Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the FAA and European Aviation Safety Agency (EASA). This proposal would not add new requirements beyond what manufacturers currently meet for EASA certification and would not affect current industry design practices. This proposal would revise the structural test requirements necessary when analysis has not been found reliable; clarify the quality control, inspection, and testing requirements for critical and non-critical castings; add control system requirements that consider structural deflection and vibration loads; expand the fuel tank structural and system requirements regarding emergency landing conditions and landing gear failure conditions; add a requirement that engine mount failure due to overload must not cause hazardous fuel spillage; and revise the inertial forces requirements for cargo compartments by removing the exclusion of compartments located below or forward of all occupants in the airplane.

**DATES:** Send comments on or before May 30, 2013.

**ADDRESSES:** Send comments identified by docket number FAA–2013–0109 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Todd Martin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1178; facsimile (425) 227–1232; email *Todd.Martin@faa.gov.*

For legal questions concerning this action, contact Sean Howe, Office of the Regional Counsel, ANM–7, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2591; facsimile (425) 227–1007; email *Sean.Howe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General Requirements.'' Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for the design and performance of aircraft that the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority. It prescribes new safety standards for the design and operation of transport category airplanes.

### I. Background

Part 25 of Title 14, Code of Federal Regulations (14 CFR) prescribes airworthiness standards for type certification of transport category airplanes, for products certified in the United States. Book 1 of the EASA Certification Specifications and Acceptable Means of Compliance for Large Aeroplanes (CS–25) prescribes the corresponding airworthiness standards for products certified in Europe. While part 25 and CS–25 Book 1 are similar, they differ in several respects. The necessity of meeting two sets of certification requirements raises the cost of developing new transport category airplanes with little to no increase in safety. Therefore, the FAA tasked ARAC through the Loads and Dynamics Harmonization Working Group (LDHWG) and the General Structures Harmonization Working Group (GSHWG) to review existing structures regulations and recommend changes that would eliminate differences between the U.S. and European airworthiness standards, while maintaining or improving the level of safety in the current regulations. This proposed rule is a result of this harmonization effort.

The LDHWG and GSHWG developed recommendations, which EASA has incorporated into CS–25 with some changes. The FAA agrees with the ARAC recommendations as adopted by EASA, and we propose to amend part 25 accordingly. The proposals are not expected to be controversial and should reduce certification costs to industry without adversely affecting safety. The complete analyses for the proposed changes made in response to ARAC recommendations can be found in the ARAC recommendation reports, located in the docket for this rulemaking.

**II. Overview of Proposed Rule**

The FAA proposes to amend the airworthiness regulations described below. This action would harmonize part 25 requirements with the corresponding requirements in EASA CS–25 Book 1.

1. Section 25.307(a), ''Proof of structure,'' would be revised to allow a ''sufficient'' level of structural testing, in some cases less than ultimate, when analysis has not been shown to be reliable.

2. Section 25.621, ''Casting factors,'' would be revised to clarify the—

- Definition of critical casting and
- Quality control, inspection, and testing requirements for critical and non-critical castings.

3. Section 25.683, ''Operation tests,'' would be revised to add a requirement that—

- The control system must remain free from jamming, friction, disconnection, and permanent damage in the presence of structural deflection and
- Under vibration loads, no hazard may result from interference or contact of the control system with adjacent elements.

4. Section 25.721, ''Landing Gear—General,'' would be revised to—

- Expand the landing gear failure conditions to include side loads, in addition to up and aft loads, and expand this requirement to include nose landing gear in addition to the main landing gear,
- Specify that the wheels-up landing conditions are assumed to occur at a descent rate of 5 feet per second,
- Add a sliding-on-ground condition, and
- Require the engine mount be designed so that, when it fails due to overload, this failure does not cause the spillage of enough fuel to constitute a fire hazard.

5. Section 25.787, ''Stowage compartments,'' would be revised to expand the inertia forces requirements for cargo compartments by removing the exclusion of compartments located below or forward of all occupants in the airplane.

6. Section 25.963, ''Fuel tanks: general,'' would be revised to—

- Require that fuel tanks be designed so that no fuel is released in or near the fuselage, or near the engines, in quantities that would constitute a fire hazard in otherwise survivable emergency landing conditions,
- Define fuel tank pressure loads for fuel tanks located within and outside the fuselage pressure boundary and near the fuselage or near the engines, and
- Specify the wheels-up landing conditions and landing gear and engine mount failure conditions that must be considered when evaluating fuel tank structural integrity.

7. Section 25.994, ''Fuel system components,'' would be revised to specify the wheels-up landing conditions to be considered when evaluating fuel system components.

**III. Discussion of the Proposal**

*A. Section 25.307(a), ''Proof of Structure''*

Section 25.307(a) currently requires that applicants for a type design conduct strength testing unless structural analysis has been shown to be reliable. When analysis has not been shown to be reliable, the regulation states that the FAA ''may require ultimate load tests in cases where limit load tests may be inadequate.''

Rather than specifying ''limit load'' or ''ultimate load,'' the GSHWG proposed that the harmonized requirement state that substantiating load tests must be made that are ''sufficient'' to verify structural behavior up to the load levels required by § 25.305 (strength and deformation). Where it is justified, these test load levels may be less than ultimate.

We propose to revise § 25.307(a) to state that, when analysis has not been shown to be reliable, tests must be conducted to ''sufficient'' load levels. Normally, testing to ultimate load levels is required, but when previous relevant test evidence can be used to support the analysis, then a lower level of testing may be accepted. The proposed rule would allow this intermediate level of testing. While the rule has changed, the intent remains the same: to ensure that the structure will not have any structural deformation under limit load or any failure under ultimate load.

This action would harmonize § 25.307(a) with the corresponding EASA standard.

*B. Section 25.621, ''Casting Factors''*

Section 25.621 currently requires classification of structural castings as either critical or non-critical, and depending on classification, specifies inspection requirements, test requirements, and casting factors for strength and deformation. These casting factors are applied in addition to the factor of safety required by § 25.303, ''Factor of safety.'' The application of factors of safety to castings is necessary because the casting process can be inconsistent. Castings are subject to variability in mechanical properties due to this casting process, which can result in imperfections (such as voids) within the cast part.

We propose to revise § 25.621 to define ''critical casting'' and to clarify the quality control, inspection, and testing requirements for critical and non-critical castings. The proposed rule would specify the inspection and testing requirements based on the casting factor chosen by the applicant—from 1.0 to 2.0 or greater.

Section 25.621 currently requires that critical castings in structural applications have a minimum casting factor of 1.25. A casting factor of 1.0 would be allowed by the proposed rule, as described below, because casting technology has improved since the current § 25.621 was adopted, and much higher quality castings can be produced using improved foundry methods. The proposed rule would require the following for critical castings:

- A visual and special non-destructive inspections. The special non-destructive inspections would be limited to specified areas of the casting where defects are likely to occur.
- A casting factor of 1.5 or greater would be allowed provided that one casting undergoes static testing and is shown to meet the relevant strength and deformation requirements. A casting factor of 1.25 or greater would be allowed provided that three castings undergo static testing and are shown to meet the relevant strength and deformation requirements.
- A casting factor of 1.0 or greater would be allowed provided that one casting undergoes static testing and is shown to meet the relevant strength and deformation requirements, and it is demonstrated that a process is in place to ensure the castings produced have material variation equivalent to those of wrought alloy products of similar composition. Draft Advisory Circular (AC) 25.621–X, ''Casting Factors,'' will be published concurrently with this NPRM. This draft AC outlines a process for using a casting factor of 1.0,

including any changes to that process that may occur over time. The proposed rule requires ''process monitoring,'' which is intended to mean continuous process monitoring for the entire production lifecycle.

The proposed rule would also specify quality control, inspection, and testing requirements for non-critical castings with casting factors ranging from 1.0 to 2.0 or greater.

*C. Section 25.683, ''Operation Tests''*

Section 25.683 currently requires the airplane control system to be free from jamming, excessive friction, and excessive deflection when subjected to pilot effort and control system loads. We propose to revise § 25.683 by adding a requirement to substantiate that, in the presence of deflections of the airplane structure due to maneuver loads, the control system can be exercised and remain free from jamming, friction, disconnection, and any form of permanent damage. In addition, we propose adding a requirement to substantiate that, under vibration loads, no interference or contact of the control system with adjacent elements can result in hazard.

Since control systems are typically attached or routed through adjacent aircraft structure, it is necessary to ensure that deflections of that adjacent structure do not adversely affect the safe operation of the control system through interference, jamming, or induced loading. Also, the control system design should be such that the effects of vibration loads in normal flight and ground operating conditions will not affect the safe operation of the control system.

These actions would harmonize § 25.683 with the corresponding EASA standard.

*D. Section 25.721, ''Landing Gear—General (Emergency Landing Conditions)''*

Section 25.721(a) currently requires that the main landing gear system be designed so that if it fails due to overloads during takeoff and landing, the failure does not cause the spillage of enough fuel to constitute a fire hazard. This is intended to protect fuel tanks from rupture and puncture due to the failure of the landing gear and its supports. This requirement applies only to fuel systems inside the fuselage for airplanes with 9 seats or less, and all fuel systems for airplanes with 10 seats or more. We propose to revise § 25.721(a) to:

1. Apply to the nose landing gear as well as the main landing gear,

2. Clarify that landing gear failure is assumed,

3. Expand the failure conditions to include side loads, in addition to up and aft loads, and

4. Remove the exception for airplanes with less than 10 seats.

We propose revising § 25.721(a) to apply to the nose gear as well as the main landing gear because nose gear failures can also impact fuel tanks. We would also clarify that landing gear failure is assumed by stating that the design must consider such failures ''when'' they occur, rather than ''if'' they occur. This clarification is needed because in some past cases, applicants relied on over-designing the landing gear beyond ultimate strength requirements rather than showing safe separation in the event of failure.

We would expand the failure conditions to consider side loads to ensure that a comprehensive range of failure conditions are considered. Lastly, we would remove the exception for airplanes with less than 10 seats.

This exception in § 25.721 was originally introduced at Amendment 25–32 (37 FR 3969, February 24, 1972). In the preamble to that final rule, the FAA determined that:

> [C]ertain of the requirements in proposed Secs. 25.562, 25.721, 25.787, 25.807, and 25.812 are inappropriate and unnecessary, or are unnecessarily severe, for transport category airplanes that have maximum passenger seating configurations, excluding pilots seats, of nine seats or less. In those instances, the proposed requirements have been revised to provide exceptions and to include requirements for such airplanes that provide a level of safety for such airplanes equivalent to that for airplanes with larger passenger seating configurations.

This exception is appropriate for certain cabin safety provisions that necessitate the egress of large numbers of passengers. However, the FAA believes that for the hazards associated with fuel fires, there is no technical justification for limiting the applicability of any of the fuel tank protection provisions based on the passenger seating capacity.

Section 25.721(b) currently states that airplanes must be able to land on a paved runway, with any one or more landing gear legs not extended, without failures that result in spillage of enough fuel to constitute a fire hazard. This condition is not intended to treat a collapsed gear condition, but is intended to cover cases in which one or more gear legs do not extend for whatever reason, and the airplane must make a controlled landing on a paved runway in this condition. The current requirement applies only to airplanes with 10 seats or more. We propose to revise § 25.721(b) to:

1. Specify that the wheels-up landing conditions are assumed to occur at a descent rate of 5 feet per second,

2. Clarify the combinations of retracted landing gear that must be considered,

3. Add a sliding-on-ground condition, and

4. Remove the exception for airplanes with less than 10 seats.

At the time § 25.721(b) was adopted by Amendment 25–32 (37 FR 3969, February 24, 1972), § 25.561 contained a landing descent speed of ''5 feet per second'' as an alternative criterion that could allow a reduction in the specified vertical emergency landing design load factor. Amendment 25–64 (53 FR 17646, May 17, 1988) removed this alternative to make the specified vertical design load factor the minimum design condition. However, the 5-feet-per-second descent speed contained in § 25.561 had become, by design practice and interpretation, the design descent velocity for the wheels-up landing conditions addressed in §§ 25.721 and 25.994. By removing it, the quantitative definition of the wheels-up landing condition on a paved runway was lost. We propose to revise § 25.721(b) to re-establish the 5-feet-per-second descent rate for the ''minor crash landing'' condition.

We would add a sliding-on-ground condition to ensure that the wheels-up landing conditions are evaluated beyond the initial impact. The exception for airplanes with less than 10 seats would be removed from § 25.721(a) and (b) as noted above.

We propose to replace § 25.721(c) with a new requirement that the engine mount and pylon be designed so that, when it fails due to overload, the failure mode is not likely to cause the spillage of enough fuel to constitute a fire hazard. Service experience has shown that landing gear malfunctions can lead to the airplane landing on the engine nacelles for some configurations. This can result in the engine nacelle breaking away, creating much the same fuel tank rupture potential as the landing gear breaking away.

These actions would harmonize § 25.721 with the corresponding EASA standard.

*E. Section 25.787(a), ''Stowage Compartments''*

Section 25.787(a) currently requires that cargo compartments be designed to the emergency landing conditions of § 25.561(b), but excludes compartments located below or forward of all occupants in the airplane. We propose

to revise § 25.787(a) to include compartments located below or forward of all occupants in the airplane. This change would ensure that, in these compartments, inertia forces in the up and aft direction will not injure passengers, and inertia forces in any direction will not cause penetration of fuel tanks or lines, or cause other hazards. This action would harmonize § 25.787(a) with the corresponding EASA standard.

The LDHWG originally recommended that § 25.561(c) be revised to achieve this objective of addressing cargo compartments below or forward of airplane occupants. However, when evaluating the LDHWG recommendation, EASA determined that CS 25.787 already addressed the issue and noted that § 25.787(a) and CS 25.787(a) were different in this regard. Separately, ARAC also tasked the Cabin Safety Harmonization Working Group with reviewing § 25.787, and that group also recommended that the FAA harmonize § 25.787(a) with CS 25.787(a). The FAA agrees that the change should be made to § 25.787(a), rather than § 25.561.

*F. Section 25.963(d), ''Fuel Tanks: General (Emergency Landing Conditions)''*

Section 25.963(d) currently requires that fuel tanks within the fuselage contour be able to resist rupture and retain fuel under the inertia forces defined in § 25.561. In addition, these tanks must be in a protected position so that exposure of the tanks to scraping action with the ground is unlikely. We propose to revise § 25.963(d), as described below, based on recommendations provided by the LDHWG.

1. The introductory sentence to § 25.963(d) would require that, ''so far as it is practicable,'' fuel tanks be designed, located and installed so that no fuel is released in or near the fuselage, or near the engines, in quantities that would constitute a fire hazard in ''otherwise survivable emergency landing conditions.'' This is considered a general requirement, while more specific criteria are provided in § 25.963(d)(1) through (d)(5). The term ''practicable'' here means that any feasible or workable design should be considered in order to protect the fuel tanks. The phrase ''otherwise survivable emergency landing conditions'' is not specifically quantified. However, past events should be considered in developing a robust fuel tank design.

2. Section 25.963(d)(1) through (d)(3) would define fuel tank pressure loads for fuel tanks located within and outside the fuselage pressure boundary, and near the fuselage or near the engines, as described below.

The LDHWG recommended revising § 25.963(d) to delete the reference to § 25.561 for emergency landing load factors, which are used to develop the fuel tank pressure loads. The emergency landing load factors of § 25.561(b)(3) are based upon the restraint of fixed mass items, and the response of a fluid during emergency landings is different and much more complex to quantify. The proposed requirements for fuel tanks both within and outside of the fuselage pressure boundary have been simply formulated in terms of equations with factors that are justified based upon the satisfactory service experience of the existing fleet.

The current regulation addresses only fuel tanks within the fuselage contour, although the FAA has issued special conditions to require fuel inertia loading conditions on horizontal tail tanks outside the fuselage contour.

The LDHWG determined that the safety record for fuel tank rupture caused solely by fuel inertia loads is excellent. Manufacturers' records of accidents and serious incidents involving large transport airplanes showed no event where fuel inertia pressure caused significant loss of fuel. Fuel losses that did occur were mainly caused by direct impact and external-object punctures.

Nevertheless, a fuel inertia criterion for wing fuel tanks is needed to ensure that future designs meet the same level of safety achieved by the current fleet. The wing fuel tanks of many current aircraft types were designed to a simple criterion in which fuel pressure was calculated using an inertia head equal to the local geometrical stream-wise distance between the fuel tank solid boundaries. Service experience has shown this criterion produces fuel tank designs with an acceptable level of safety. Therefore, it is appropriate that the future airworthiness standards for fuel tanks should require a similar level of design fuel pressure for similar fuel tank designs.

For fuel tanks within the fuselage pressure boundary, the current fuel inertia load criterion, as generally applied, covers up to a full fuel tank, an inertia head equal to maximum pressure head, and inertia load factors equal to those of § 25.561(b)(3). This level of rupture resistance for fuel tanks is justified based upon occupant survivability considerations. Therefore, the LDHWG recommended, and the FAA concurs, that the current minimum level of rupture resistance should be retained for fuel tanks within the fuselage pressure boundary. For fuel tanks outside the fuselage pressure boundary, the design load factors for the inboard and outboard (lateral) loading conditions and forward loading conditions are proposed as one-half of those for fuel tanks within the fuselage. The design load factors for the up, down, and aft loading conditions would be the same for all fuel tanks.

When EASA adopted the LDHWG recommendations, it noted an objection that had been raised by the Joint Aviation Authorities (JAA) Power Plant Study Group (PPSG). The PPSG did not agree with the LDHWG recommendation regarding fuel tank pressure loads for fuel tanks ''near the fuselage or near the engines,'' which had been specifically addressed by Joint Aviation Regulation. In response to the PPSG objection, EASA added criteria for fuel tanks near the fuselage and near the engines. We agree with these criteria and propose to add the same to § 25.963(d).

3. Section 25.963(d)(4) would require that the effects of crushing and scraping actions with the ground not cause fuel spillage, or generate temperatures that would constitute a fire hazard under the conditions specified in proposed § 25.721(b). By reference to § 25.721(b), this rule would require consideration of the 5 feet-per-second wheels-up landing criteria and subsequent sliding on the ground. The potential effects of crushing and scraping, including thermal effects, must be evaluated for these minor crash landing conditions.

4. Section 25.963(d)(5) would require that fuel tank installations be such that the tanks will not rupture as a result of an engine pylon or engine mount or landing gear tearing away as specified in proposed § 25.721(a) and (c). This requirement would be largely redundant to the proposed § 25.721(a) and (c), but is included in § 25.963(d) for completeness.

These actions would harmonize § 25.963(d) with the corresponding EASA standard with the following two exceptions:

CS 25.963(d) requires that fuel tanks be designed and located so that no fuel is released in quantities ''sufficient to start a serious fire'' in otherwise survivable emergency landing conditions. The proposed rule would require that no fuel is released in quantities ''that would constitute a fire hazard.'' The two phrases have the same intent and meaning, and the latter phrase is consistent with the wording in CS 25.721/§ 25.721, CS 25.963(d)(4)/§ 25.963(d)(4), and CS 25.994/§ 25.994.

The fuel tank pressure criteria in CS 25.963(d) vary depending on whether the fuel tank is ''within the fuselage

contour'' or ''outside the fuselage contour.'' The proposed rule would be more specific by referring to ''those parts of fuel tanks within the fuselage pressure boundary or that form part of the fuselage pressure boundary'' versus ''those parts of fuel tanks outside the fuselage pressure boundary.'' The proposed wording is clearer and has the same intent and meaning as that specified in CS 25.963(d).

*G. Section 25.994, ''Fuel System Components''*

Section 25.994 currently requires that fuel system components in an engine nacelle or in the fuselage be protected from damage that could result in spillage of enough fuel to constitute a fire hazard as a result of a wheels-up landing on a paved runway. We propose to revise § 25.994 to specify that the wheels-up landing conditions that must be considered are those defined in proposed § 25.721(b). This action would harmonize § 25.994 with the corresponding EASA standard.

As noted previously, the 5-feet-per-second descent speed contained in an earlier amendment to § 25.561 had become, by design practice and interpretation, the design descent velocity for the wheels-up landing conditions addressed in §§ 25.721 and 25.994. In fact, Advisory Circular (AC) 25.994–1, ''Design Considerations to Protect Fuel Systems During a Wheel-Up Landing,'' dated July 24, 1986, specifically referred to § 25.561 for the design conditions, which at that time contained the 5-feet-per-second landing descent criteria.

*H. Advisory Material*

The FAA is developing three new proposed ACs to be published concurrently with the proposed regulations in this NPRM. The proposed ACs would provide guidance material for acceptable means, but not the only means, of demonstrating compliance with proposed §§ 25.307, 25.561, 25.621, 25.721, 25.963, and 25.994. We will accept public comments to the following proposed ACs on the ''Aviation Safety Draft Documents Open for Comment'' Internet Web site at *http://www.faa.gov/aircraft/draft_docs/:*

- AC 25–X, ''Fuel Tank Strength in Emergency Landing Conditions.'' (AC 25–X would provide guidance for the fuel tank structural integrity requirements of §§ 25.561, 25.721, and 25.963.)
- AC 25.307–X, ''Proof of Structure.''
- AC 25.621–X, ''Casting Factors.''

## IV. Regulatory Notices and Analyses

*A. Regulatory Evaluation*

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows.

The FAA proposes to amend certain airworthiness standards for transport category airplanes. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the FAA and EASA. This proposal would not add new requirements beyond what manufacturers currently meet for EASA certification and would not affect current industry design practices. Meeting two sets of certification requirements raises the cost of developing new transport category airplanes with little to no increase in safety. In the interest of fostering international trade, lowering the cost of manufacturing new transport category airplanes, and making the certification process more efficient, the FAA, EASA, and several industry working groups came together to create, to the maximum extent possible, a single set of certification requirements that would be accepted in both the United States and Europe. Therefore, as a result of these harmonization efforts, the FAA proposes to amend the airworthiness regulations described in section II of this NPRM, ''Overview of the Proposed Rule.'' This action would harmonize part 25 requirements with the corresponding requirements in EASA CS–25 Book 1.

Currently, all manufacturers of transport category airplanes, certificated under part 25 are expected to continue their current practice of compliance with the EASA certification requirements in CS–25 Book 1. Since future certificated transport airplanes are expected to meet CS–25 Book 1, and this rule simply adopts the same EASA requirements, manufacturers will incur minimal or no additional cost resulting from this proposed rule. Therefore, the FAA estimates that there are no additional costs associated with this proposed rule.

In fact, manufacturers could receive cost savings because they will not have to build and certificate transport category airplanes to two different authorities' certification specifications and rules.

The FAA, however, has not attempted to quantify the cost savings that may accrue from this rule, beyond noting that while they may be minimal, they contribute to a potential harmonization savings. The agency concludes that because the compliance cost for this proposed rule is minimal and there may be harmonization cost savings, further analysis is not required.

The FAA has, therefore, determined that this proposed rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

*B. Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and

consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify, and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this rule would not have a significant economic impact on a substantial number of small entities for the following reason. The net effect of this rule is minimum regulatory cost relief as the proposed rule would adopt those EASA requirements that industry already complies with. Moreover, manufacturers of part 25 airplanes are not small entities. Because those manufacturers already meet or expect to meet this CS–25 standard as well as the existing CFR requirement, the net effect of this proposed rule is regulatory cost relief.

Because manufacturers of transport category airplanes are not small entities, this proposed rule is expected to have minimal to no additional costs, and could be cost-relieving, as the acting FAA Administrator, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

*C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it is in accord with the Trade Agreements Act as the rule uses European standards as the basis for United States regulation.

*D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

*E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule.

*F. International Compatibility and Cooperation*

(1) In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

(2) Executive Order (EO) 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609, Promoting International Regulatory Cooperation. The agency has determined that this action would eliminate differences between U.S. aviation standards and those of other civil aviation authorities by creating a single set of certification requirements for transport category airplanes that would be acceptable in both the United States and Europe.

*G. Environmental Analysis*

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f of Order 1050.1E and involves no extraordinary circumstances.

**V. Executive Order Determinations**

*A. Executive Order 13132, Federalism*

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

*B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

**VI. Additional Information**

*A. Comments Invited*

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended

change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

*B. Availability of Rulemaking Documents*

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal at *http://www.regulations.gov,*

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies,* or

3. Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

## PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704.

■ 2. Amend § 25.307 by revising paragraph (a) to read as follows:

**§ 25.307 Proof of structure.**

(a) Compliance with the strength and deformation requirements of this subpart must be shown for each critical loading condition. Structural analysis may be used only if the structure conforms to that for which experience has shown this method to be reliable. In other cases, substantiating tests must be made to load levels that are sufficient to verify structural behavior up to loads specified in § 25.305.

* * * * *

■ 3. Amend § 25.621 by revising paragraphs (a), (c), and (d) to read as follows:

**§ 25.621 Casting factors.**

(a) *General.* For castings used in structural applications, the factors, tests, and inspections specified in paragraphs (b) through (d) of this section must be applied in addition to those necessary to establish foundry quality control. The inspections must meet approved specifications. Paragraphs (c) and (d) of this section apply to any structural castings, except castings that are pressure tested as parts of hydraulic or other fluid systems and do not support structural loads.

(b) * * *

(c) *Critical castings.* Each casting whose failure could preclude continued safe flight and landing of the airplane or could result in serious injury to occupants is considered a critical casting. Each critical casting must have a factor associated with it for showing compliance with strength and deformation requirements, and must comply with the following criteria associated with that factor:

(1) A casting factor of 1.0 or greater may be used, provided that—

(i) It is demonstrated, in the form of process qualification, proof of product, and process monitoring that, for each casting design and part number, the castings produced by each foundry and process combination have coefficients of variation of the material properties that are equivalent to those of wrought alloy products of similar composition. Process monitoring must include testing of coupons cut from the prolongations of each casting (or each set of castings, if produced from a single pour into a single mold in a runner system) and, on a sampling basis, coupons cut from critical areas of production castings. The acceptance criteria for the process monitoring inspections and tests must be established and included in the process specifications to ensure the properties of the production castings are controlled to within levels used in design.

(ii) Each casting receives:

(A) Inspection of 100% of its surface, using visual and liquid penetrant, or equivalent, inspection methods; and

(B) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic, or equivalent, inspection methods.

(iii) One casting undergoes a static test and is shown to meet the strength and deformation requirements of § 25.305(a) and (b).

(2) A casting factor of 1.25 or greater may be used, provided that—

(i) Each casting receives:

(A) Inspection of 100% of its surface, using visual and liquid penetrant, or equivalent inspection methods; and

(B) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic, or equivalent, inspection methods.

(ii) Three castings undergo static tests and are shown to meet:

(A) The strength requirements of § 25.305(b) at an ultimate load corresponding to a casting factor of 1.25; and

(B) The deformation requirements of § 25.305(a) at a load of 1.15 times the limit load.

(3) A casting factor of 1.50 or greater may be used, provided that—

(i) Each casting receives:

(A) Inspection of 100% of its surface, using visual and liquid penetrant, or equivalent, inspection methods; and

(B) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic, or equivalent, inspection methods.

(ii) One casting undergoes a static test and is shown to meet:

(A) The strength requirements of § 25.305(b) at an ultimate load corresponding to a casting factor of 1.50; and

(B) The deformation requirements of § 25.305(a) at a load of 1.15 times the limit load.

(d) *Non-critical castings.* For each casting other than critical castings, as specified in paragraph (c) of this section, the following apply:

(1) A casting factor of 1.0 or greater may be used, provided that the requirements of (c)(1) of this section are met, or all of the following conditions are met:

(i) Castings are manufactured to approved specifications that specify the minimum mechanical properties of the material in the casting and provides for demonstration of these properties by testing of coupons cut from the castings on a sampling basis.

(ii) Each casting receives:

(A) Inspection of 100% of its surface, using visual and liquid penetrant, or equivalent, inspection methods; and

(B) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic, or equivalent, inspection methods.

(iii) Three sample castings undergo static tests and are shown to meet the strength and deformation requirements of § 25.305(a) and (b).

(2) A casting factor of 1.25 or greater may be used, provided that each casting receives:

(i) Inspection of 100% of its surface, using visual and liquid penetrant, or equivalent, inspection methods; and

(ii) Inspection of structurally significant internal areas and areas where defects are likely to occur, using radiographic, or equivalent, inspection methods.

(3) A casting factor of 1.5 or greater may be used, provided that each casting receives inspection of 100% of its surface using visual and liquid penetrant, or equivalent, inspection methods.

(4) A casting factor of 2.0 or greater may be used, provided that each casting receives inspection of 100% of its surface using visual inspection methods.

(5) The number of castings per production batch to be inspected by non-visual methods in accordance with paragraphs (d)(2) and (d)(3) of this section may be reduced when an approved quality control procedure is established.

■ 4. Amend § 25.683 by redesignating the introductory text as paragraph (a), redesignating paragraphs (a), (b), and (c) as paragraphs (a)(1), (a)(2), and (a)(3) respectively, and adding paragraphs (b) and (c) to read as follows:

**§ 25.683 Operation tests.**

(a) It must be shown by operation tests that when portions of the control system subject to pilot effort loads are loaded to 80% of the limit load specified for the system and the powered portions of the control system are loaded to the maximum load expected in normal operation, the system is free from—

(1) Jamming;

(2) Excessive friction; and

(3) Excessive deflection.

(b) It must be shown by analysis and, where necessary, by tests that in the presence of deflections of the airplane structure due to the separate application of pitch, roll, and yaw limit maneuver loads, the control system, when loaded to obtain these limit loads and operated within its operational range of deflections, can be exercised about all control axes and remain free from—

(1) Jamming;

(2) Excessive friction;

(3) Disconnection, and

(4) Any form of permanent damage.

(c) It must be shown that under vibration loads in the normal flight and ground operating conditions, no hazard can result from interference or contact with adjacent elements.

■ 5. Revise § 25.721 to read as follows:

**§ 25.721 General.**

(a) The landing gear system must be designed so that when it fails due to overloads during takeoff and landing, the failure mode is not likely to cause spillage of enough fuel to constitute a fire hazard. The overloads must be assumed to act in the upward and aft directions in combination with side loads acting inboard and outboard. In the absence of a more rational analysis, the side loads must be assumed to be up to 20% of the vertical load or 20% of the drag load, whichever is greater.

(b) The airplane must be designed to avoid any rupture leading to the spillage of enough fuel to constitute a fire hazard as a result of a wheels-up landing on a paved runway, under the following minor crash landing conditions:

(1) Impact at 5 feet-per-second vertical velocity, with the airplane under control, at Maximum Design Landing Weight—

(i) With the landing gear fully retracted and, as separate conditions,

(ii) With any other combination of landing gear legs not extended.

(2) Sliding on the ground, with—

(i) The landing gear fully retracted and with up to a 20° yaw angle and, as separate conditions,

(ii) Any other combination of landing gear legs not extended and with 0° yaw angle.

(c) For configurations where the engine nacelle is likely to come into contact with the ground, the engine pylon or engine mounting must be designed so that when it fails due to overloads (assuming the overloads to act predominantly in the upward direction and separately, predominantly in the aft direction), the failure mode is not likely to cause the spillage of enough fuel to constitute a fire hazard.

■ 6. Amend § 25.787 by revising paragraph (a) to read as follows:

**§ 25.787 Stowage compartments.**

(a) Each compartment for the stowage of cargo, baggage, carry-on articles, and equipment (such as life rafts), and any other stowage compartment, must be designed for its placarded maximum weight of contents and for the critical load distribution at the appropriate maximum load factors corresponding to the specified flight and ground load conditions, and to the emergency landing conditions of § 25.561(b)(3) where the breaking loose of the contents of such compartments could—

(1) Cause direct injury to occupants;

(2) Penetrate fuel tanks or lines or cause fire or explosion hazard by damage to adjacent systems; or

(3) Nullify any of the escape facilities provided for use after an emergency landing.

If the airplane has a passenger-seating configuration, excluding pilot seats, of 10 seats or more, each stowage compartment in the passenger cabin, except for under seat and overhead compartments for passenger convenience, must be completely enclosed.

* * * * *

■ 7. Amend § 25.963 by revising paragraph (d) to read as follows:

**§ 25.963 Fuel tanks: general.**

* * * * *

(d) Fuel tanks must, so far as it is practicable, be designed, located, and installed so that no fuel is released in or near the fuselage, or near the engines, in quantities that would constitute a fire hazard in otherwise survivable emergency landing conditions, and—

(1) Fuel tanks must be able to resist rupture and retain fuel under ultimate hydrostatic design conditions in which

the pressure P within the tank varies in accordance with the formula:

$P = K\rho gL$

Where

P = fuel pressure at each point within the tank.
ρ = typical fuel density.
g = acceleration due to gravity.
L = a reference distance between the point of pressure and the tank farthest boundary in the direction of loading.
K = 4.5 for the forward loading condition for those parts of fuel tanks outside the fuselage pressure boundary.
K = 9 for the forward loading condition for those parts of fuel tanks within the fuselage pressure boundary, or that form part of the fuselage pressure boundary.
K = 1.5 for the aft loading condition.
K = 3.0 for the inboard and outboard loading conditions for those parts of fuel tanks within the fuselage pressure boundary, or that form part of the fuselage pressure boundary.
K = 1.5 for the inboard and outboard loading conditions for those parts of fuel tanks outside the fuselage pressure boundary.
K = 6 for the downward loading condition.
K = 3 for the upward loading condition.

(2) For those parts of wing fuel tanks near the fuselage or near the engines, the greater of the fuel pressures resulting from paragraphs (d)(2)(i) and (d)(2)(ii) of this section must be used:

(i) The fuel pressures resulting from paragraph (d)(1) of this section, and

(ii) The lesser of the two following conditions:

(A) Fuel pressures resulting from the accelerations as specified in § 25.561(b)(3) considering the fuel tank full of fuel at maximum fuel density. Fuel pressures based on the 9.0g forward acceleration may be calculated using the fuel static head equal to the streamwise local chord of the tank. For inboard and outboard conditions, an acceleration of 1.5g may be used in lieu of 3.0g as specified in § 25.561(b)(3), and

(B) Fuel pressures resulting from the accelerations as specified in § 25.561(b)(3) considering a fuel volume beyond 85% of the maximum permissible volume in each tank using the static head associated with the 85% fuel level. A typical density of the appropriate fuel may be used. For inboard and outboard conditions, an acceleration of 1.5g may be used in lieu of 3.0g as specified in § 25.561(b)(3).

(3) Fuel tank internal barriers and baffles may be considered as solid boundaries if shown to be effective in limiting fuel flow.

(4) For each fuel tank and surrounding airframe structure, the effects of crushing and scraping actions with the ground should not cause the spillage of enough fuel, or generate temperatures that would constitute a fire hazard under the conditions specified in § 25.721(b).

(5) Fuel tank installations must be such that the tanks will not rupture as a result of an engine pylon or engine mount or landing gear, tearing away as specified in § 25.721(a) and (c).

* * * * *

■ 8. Revise § 25.994 to read as follows:

**§ 25.994 Fuel system components.**

Fuel system components in an engine nacelle or in the fuselage must be protected from damage that could result in spillage of enough fuel to constitute a fire hazard as a result of a wheels-up landing on a paved runway under each of the conditions prescribed in § 25.721(b).

Issued in Washington, DC, on February 14, 2013.

**Dorenda D. Baker,**

*Director, Aircraft Certification Service.*

[FR Doc. 2013–04812 Filed 2–28–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2013–0026; Airspace Docket No. 13–ANM–3]**

## Proposed Amendment of Class E Airspace; Bend, OR

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to modify Class E airspace at Bend, OR to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at Bend Municipal Airport. This action would enhance the safety and management of aircraft operations. The geographic coordinates of the airport would also be updated.

**DATES:** Comments must be received on or before April 15, 2013.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2013–0026; Airspace Docket No. 13–ANM–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0026 and Airspace Docket No. 13–ANM–3) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0026 and Airspace Docket No. 13–ANM–3''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and

phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Bend Municipal Airport, Bend, OR. Additional airspace is needed to accommodate Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approaches and departures at the Airport. This action is necessary for the safety and management of aircraft departing and arriving under IFR operations at Bend Municipal airport. The geographic coordinates of the airport would also be updated. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR Part 71.1. The Class E Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Bend Municipal Airport, OR.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM OR E5 Bend, OR [Modified]**

Bend Municipal Airport, OR
(Lat. 44°05′40″ N., long. 121°12′01″ W.)

That airspace extending upward from 700 feet above the surface within a 4.3 mile radius of Bend Municipal Airport, and within 2.2 miles each side of the 338° radial extending from the 4.3 mile radius to 6.5 NM northwest of the airport, and 1.0 mile each side of the airport 360° radial from the 4.3 mile radius to 6.0 miles north of the airport, and 1.5 miles each side of the 183° radial from the 4.3 mile radius to 9.3 miles south from the airport; that airspace extending upward from 1,200 feet above the surface bounded by a line extending from lat. 44°09′51″ N., long. 121°21′05″ W., to lat. 44°14′29″ N., long. 121°06′59″ W., to lat. 44°27′24″ N., long. 121°15′42″ W., to lat. 44°23′11″ N., long. 121°30′16″ W., thence to the point of beginning.

Issued in Seattle, Washington, on February 15, 2013.

**Clark Desing,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2013–04831 Filed 2–28–13; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 201

**[Docket ID: FEMA–2012–0001]**

**RIN 1660–AA77**

### Change in Submission Requirements for State Mitigation Plans

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule revises the Federal Emergency Management Agency (FEMA) Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years.

**DATES:** Comment on the proposed rule, including the Paperwork Reduction Act information collection, is due on or before April 30, 2013.

**ADDRESSES:** You may submit comments, identified by Docket ID: FEMA–2012–0001, by one of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail/Hand Delivery/Courier:* Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472–3100.

To avoid duplication, please use only one of these methods. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For

instructions on submitting comments, see the Public Participation portion of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Frederick Sharrocks, Branch Chief, Assessment and Planning Branch, Risk Analysis Division, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598–3030. Phone: (202) 646–2796. Facsimile: (202) 646–2787. Email: *Frederick.Sharrocks@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Abbreviations**

CFR Code of Federal Regulations
DMA 2000 Disaster Mitigation Act of 2000
DHS Department of Homeland Security
EA Environmental Assessment
EIS Environmental Impact Statement
FEMA Federal Emergency Management Agency
FMA Flood Mitigation Assistance
FOIA Freedom of Information Act
HMA Hazard Mitigation Assistance
HMGP Hazard Mitigation Grant Program
IFR Interim Final Rule
NEPA National Environmental Policy Act of 1969
NFIP National Flood Insurance Program
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
PDM Pre-Disaster Mitigation
PRA Paperwork Reduction Act of 1995
RFC Repetitive Flood Claims
RIN Regulatory Identifier Number
Stafford Act Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended
SRL Severe Repetitive Loss

**Table of Contents**



## I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this Notice of Proposed Rulemaking (NPRM). Comments that will provide the most assistance to the Federal Emergency Management Agency (FEMA) in developing this rule will refer to a specific provision of the NPRM, explain the reason for any comments, and include other information or authority that supports such comments. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. If you submit a comment, please include the Docket ID for this rulemaking, FEMA–2012–0001, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

### *A. Privacy Act*

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual who submitted the comment (or signed the comment, if submitted on behalf of an association, business, labor union, etc.). You may want to review the Federal Docket Management System system of records notice published in the **Federal Register** on March 24, 2005 (70 FR 15086).

### *B. Submission of Sensitive Information*

Do not submit comments that include trade secrets, confidential commercial or financial information to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address specified in the **ADDRESSES** section of this NPRM. If FEMA receives a request to examine or copy this information, FEMA will treat it as any other request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Homeland Security (DHS)'s FOIA regulation found in 6 Code of Federal Regulations (CFR) Part 5 and FEMA's regulations found in 44 CFR part 5.

### *C. Public Meeting*

FEMA does not plan to hold a public meeting on this NPRM, but you may submit a request for one at the address specified in the **ADDRESSES** section of this NPRM explaining why one would be beneficial. If FEMA determines that a public meeting would aid this rulemaking, FEMA will hold one at a time and place announced by a notice in the **Federal Register**.

### *D. Public Input*

FEMA welcomes comments on all aspects of the regulatory analysis; particularly comments regarding the cost and benefit estimates of this rulemaking, as well as the assumptions used to derive those estimates. Comments that would be most useful are those that include supporting data and/or provide suggestions that decrease cost or increase benefits, while still obtaining State Mitigation Planning objectives.

## II. Background

Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. The purpose of hazard mitigation planning is to identify policies and actions that can be implemented over the long-term to reduce risk and future losses. Mitigation plans form the foundation for a community's long-term strategy to reduce disaster losses and break the cycle of disaster damage, reconstruction, and repeated damage. The planning process is as important as the plan itself. It creates a framework for risk-based decision making to reduce damage to lives, property, and the economy from future disasters. State, Tribal, and local governments benefit from mitigation planning by identifying publicly-accepted cost-effective actions for risk reduction, focusing resources on the greatest risks and vulnerabilities, and building partnerships by involving people, organizations, and businesses. The planning process, and mitigation plans, foster education and awareness of hazards and risk, communicate priorities to state and Federal officials, and align risk reduction with other community objectives, such as community development. State, Tribal, and local governments are required to develop a hazard mitigation plan as a condition for receiving certain types of Federal non-emergency disaster assistance.

*A. Disaster Mitigation Act of 2000*

The Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106–390, 114 Stat. 1552, amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and provided an opportunity for States, Tribes, and local governments to take a new and revitalized approach to mitigation planning. Section 104 of DMA 2000 continued the requirement for a State mitigation plan as a condition of non-emergency disaster assistance, and created incentives for increased coordination and integration of mitigation activities at the State level. DMA 2000 repealed Section 409 of the Stafford Act, which required mitigation plans and the use of minimum standards, and replaced it with two separate sections of the law: Mitigation planning in section 322 (codified at 42 U.S.C. 5165), and minimum codes and standards in section 323 (codified at 42 U.S.C. 5165a). FEMA previously implemented section 409 through 44 CFR part 206, Subpart M. The DMA 2000 planning requirements were placed in 44 CFR part 201 to reflect the broader relevance of planning to all FEMA mitigation programs, while the minimum standards remained in 44 CFR part 206, Subpart M.

Section 104 of DMA 2000 and FEMA's implementing regulations emphasize the need for State, Tribal, and local entities to closely coordinate mitigation planning and implementation efforts. The planning process provides a link between State, Tribal and local mitigation programs. Both State level and local plans should incorporate mitigation implementation strategies and sustainable recovery actions. FEMA also recognizes that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference hazardous materials and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as expedite implementation of measures and activities to reduce those risks, both pre- and post-disaster.

DMA 2000 included a provision for increased Federal funding for hazard mitigation measures for States with approved mitigation plans. 42 U.S.C. 5165(e). FEMA implemented this provision through development of a new two-tiered State mitigation plan process: Standard State Mitigation Plans, which allow a State to receive Hazard Mitigation Grant Program (HMGP) funding ranging from 7.5 to 15 percent of disaster grants awarded by FEMA, depending on the total estimated eligible Stafford Act disaster assistance, and Enhanced State Mitigation Plans, which allow a State to receive HMGP funds based on 20 percent of the total estimated eligible Stafford Act disaster assistance. 44 CFR 201.5. Enhanced State Mitigation Plans must meet the requirements for Standard State Mitigation Plans at 44 CFR 201.4 and must also demonstrate that the State has developed a comprehensive mitigation program, that it effectively uses available mitigation funding, and that it is capable of managing the increased funding.

*B. Hazard Mitigation Assistance*

FEMA's Hazard Mitigation Assistance (HMA) grant programs provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages. Currently, FEMA administers the following HMA grant programs:

- Hazard Mitigation Grant Program (HMGP) assists in implementing long-term hazard mitigation measures following Presidential disaster declarations. Funding is available to implement projects in accordance with State, Tribal, and local priorities. HMGP grants may fund the updating of mitigation plans.
- Pre-Disaster Mitigation (PDM) provides funds on an annual basis for hazard mitigation planning and the implementation of mitigation projects prior to a disaster. The goal of the PDM program is to reduce overall risk to the population and structures, while at the same time reducing reliance on Federal funding from actual disaster declarations. PDM grants may fund the updating of mitigation plans.
- Flood Mitigation Assistance (FMA) provides funds on an annual basis so that measures can be taken to reduce or eliminate risk of flood damage to buildings insured under the National Flood Insurance Program (NFIP). FMA grants may fund the updating of mitigation plans.
- Repetitive Flood Claims (RFC) provides funds on an annual basis to reduce the risk of flood damage to individual properties insured under the NFIP that have had one or more claim payments for flood damages.
- Severe Repetitive Loss (SRL) provides funds on an annual basis to reduce the risk of flood damage to residential structures insured under the NFIP that are qualified as SRL structures.

FEMA's HMA grants are provided to eligible applicants (States/Tribes/Territories) that, in turn, provide subgrants to local governments and other eligible entities. Subgrantees may be a State agency, local government, private nonprofit organization (for HMGP only), or Indian Tribal government. Indian Tribal governments acting as a subgrantee are accountable to the State grantee. The applicant selects and prioritizes subapplications developed and submitted to them by subapplicants. These subapplications are submitted to FEMA for consideration of funding.

Under FEMA's mitigation grant programs there is a standard cost share formula in which the Federal government provides 75 percent of the project cost and the State or subgrantee provides 25 percent. In general, hazard mitigation assistance is restricted to a percentage of total Federal contributions for a major disaster, which currently ranges from 7.5 to 15 percent depending on the estimated aggregate amount of Federal grants for that disaster. 42 U.S.C. 5170c(a). Indian Tribal governments that meet the requirments for Enhanced State Mitigation Plans may also be considered for increased HMGP funding. 44 CFR 201.3(e)(3).

*C. Regulatory History*

FEMA's February 26, 2002 Interim Final Rule (IFR), entitled ''Hazard Mitigation Planning and Hazard Mitigation Grant Program,'' 67 FR 8844, implemented section 322 of the Stafford Act by adding a new part 201 to 44 CFR. The IFR discontinued the requirement under former section 409 of the Stafford Act that States revise their mitigation plan after every disaster declaration, but included the requirement that Standard State Mitigation Plans had to be updated by November 1, 2003 [1] and resubmitted to the appropriate Regional Director for approval every 3 years from the date of the approval of the previous plan in order to continue program eligibility. Additionally, the IFR provided criteria for Enhanced State Mitigation Plans and required that for States to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation Plan must be approved by FEMA within the 3 years prior to the current major disaster declaration, and resubmitted for approval every three years. On October 31, 2007, FEMA published a Final Rule adopting, without substantive changes, the requirements for hazard mitigation

[1] An October 1, 2002 revision changed the date by which the Standard State Mitigation Plans had to be updated from November 1, 2003 to November 1, 2004. 67 FR 61512. A subsequent revision on September 13, 2004 provided for a 6 month extension, up to May 1, 2005, at the request of the Governor or Indian Tribal leader. 69 FR 55094.

planning pursuant to section 322 of the Stafford Act.

Table 1 displays the regulatory history for the mitigation planning requirements listed in §§ 201.3–201.5 for the Standard and Enhanced State Mitigation Plan reporting requirements. Currently, these Plans have to be updated every 3 years.

TABLE 1

| RIN | Action | Date | Federal Register citation | Effect on §§ 201.3, 201.4, & 201.5 | Changes to state mitigation plan requirements |
|---|---|---|---|---|---|
| 3067–AD22 | IFR | 2/26/02 | 67 FR 8844 | Added §§ 201.3, 201.4, & 201.5. | States must have approved Standard State Mitigation Plan by November 1, 2003 and every 3 years from the date of the approval of the previous plan. Enhanced State Mitigation Plans resubmitted to the appropriate Regional Director every 3 years. For State to be eligible for 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the 3 years prior to current major disaster declaration. |
| 3067–AD22 | IFR | 10/1/02 | 67 FR 61512 | Revised §§ 201.3 and 201.4. | Changed the requirement to update the Standard State Mitigation Plan to November 1, 2004. |
| 1660–AA17 [2] | IFR | 9/13/04 | 69 FR 55094 | Added § 201.3(c)(7) & Revised § 201.4. | Allowed a 6 month extension to the deadline for the Standard State Mitigation Plan, up to May 1, 2005. |
| 1660–AA17 | Final Rule | 10/31/07 | 72 FR 61552 | Finalized Part 201 | Corrected a typographical error in § 201.4(c)(2)(ii). |
| 1660–AA36 | IFR | 10/31/07 | 72 FR 61720 | Revised § 201.3 | Removed references to November 1, 2004 deadline and made technical corrections. |
| 1660–AA36 | Final Rule | 9/16/09 | 74 FR 47471 | Finalized § 201.3 | No changes. |

*D. Discussion of the NPRM*

Currently, under the mitigation planning regulations found at 44 CFR Part 201, State Mitigation Plans (Standard and Enhanced) are required to be updated every 3 years as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. This proposed rule would reduce the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years.

The purpose of mitigation planning is to develop and maintain a continuous process leading to implementation of actions that reduce the Nation's losses from future natural disasters and promote more resilient communities, thus reducing disaster response and recovery costs. Mitigation planning may differ from other types of planning in that this inclusive process is designed to encourage coordination with other agencies, stakeholders, programs, and initiatives. Further, in order to be effective, plans must be relevant. Therefore, § 201.4(d) requires that mitigation plans be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities.

Mitigation planning is a continuous process of engaging stakeholders, identifying hazards as conditions may change, assessing risk and vulnerabilities as development patterns may change, and developing a strategy that can be implemented using available resources, programs, and initiatives based on current priorities. The outcome of the mitigation planning process is implementation of mitigation actions that reduce vulnerabilities identified in the risk assessment.

As stated in the planning regulations at § 201.4(a), the mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. In addition, per § 201.4(c)(4)(i), States have the responsibility to support, through funding and technical assistance, the development of Local Mitigation Plans. Through mitigation planning, States build partnerships as well as capacity to increase resilience and reduce the Nation's risk to natural hazards.

As mitigation planning is a performance-based approach rather than prescriptive, there is a wide range in the level of effort invested to meet the minimum requirements for FEMA approval. This performance-based approach allows State, local, and Tribal governments the ability to tailor mitigation strategies and actions to meet specific risks and vulnerabilities identified through risk assessments. In many instances, mitigation plan updates provide opportunities for State, local, and Tribal governments not only to verify that the plans are still relevant, but also to strengthen and improve mitigation strategies and specific actions to reduce risk and improve resilience.

FEMA proposes the change in the frequency of the update requirement for several reasons. First, the proposed reduction in update frequency will reduce the regulatory burden on States and those Indian Tribal governments that may choose to develop Enhanced Plans, as well as on FEMA. Second, aligning the update frequency with local and Tribal update requirements may foster closer coordination of mitigation planning and implementation efforts. Third, by relieving the regulatory burden imposed from the frequency of State plan updates, States and FEMA may be able to shift resources from the update and review cycle to other mitigation planning activities, such as increased delivery of training and technical assistance to support Local

[2] The RIN changed from 3067–AD22 to 1660–AA17 as a result of FEMA becoming a component of the Department of Homeland Security.

and Tribal Mitigation Planning, and to implementing additional mitigation actions identified through the planning process.

*E. Stakeholder Involvement*

Since 2008, stakeholders, such as the National Emergency Management Association (NEMA), have voiced concerns to FEMA about the frequency of the update requirement for State Mitigation Plans. For example, the NEMA Mitigation Committee prepared a position paper, dated September 8, 2008, stating that the

> disparity between update cycles of [S]tate and local-[T]ribal plans creates an undue hardship on a number of [S]tates with limited staffing or that have experienced multiple disasters within a plan lifecycle. These [S]tates feel compelled to begin the plan review and update process immediately after their plan was reapproved.

This position paper included a recommendation to support

> a revision to 44 CFR Part 201 to extend State Hazard Mitigation Plans revision and revision requirements, and FEMA review of [S]tate mitigation activities, from [3] years to [5] years to match the review cycles for local and [T]ribal hazard mitigation plans.

In 2011, DHS received public comments on the mitigation planning regulations in response to a **Federal Register** notice published as part of a retrospective review of its regulations. According to the final report titled ''Final Plan for the Retrospective Review of Existing Regulations'' dated August 22, 2011 (See page 16),

> DHS received a comment (the top-voted comment mentioned above) recommending that DHS change the current FEMA State Standard and Enhanced Hazard Mitigation Plan update requirement from every [3] years to every [5] years so that it is consistent with current Local Hazard Mitigation Plan update requirements. Commenters asserted that [5] years would be an appropriate timeframe for [S]tate mitigation plan updates for both efficiency and resource-limitation reasons.

As part of the review, DHS determined that FEMA will consider possible changes to the mitigation planning regulations as part of a long-term retrospective review over the next 3 years. The ''Final Plan for the Retrospective Review of Existing Regulations'' is available at the following link: *https://www.dhs.gov/xlibrary/assets/dhs-ogc-final-retrospective-review-plan-8-22-11-final.pdf.*

On November 8, 2011, 23 Members of Congress sent a letter to FEMA Administrator Fugate requesting that FEMA

> alter its regulations under 44 CFR Part 201 and extend to [5] years the cycle by which State Hazard Mitigation Plans must be submitted. The existing [3]-year time frame for FEMA to review and approve new mitigation plans has become increasingly burdensome for many [S]tate planning offices.

The letter further stated that

> [t]he shorter cycle creates an undue hardship on [S]tates with limited staffing or those that have experienced multiple disasters within a plan lifecycle. In order to prevent a disqualifying lapse, these [S]tates are compelled to restart the process immediately following the approval of the previous plan.

Finally, the letter closed by stating

> [m]aintaining high quality up-to-date mitigation plans is a critical component of our national disaster response plan. Extending the update cycle to [5] years would ensure that our [S]tate planning offices can complete this vital task, along with their other duties, while maximizing available resources.

The 23 Members of Congress asked FEMA to amend 44 CFR Part 201 to accommodate this change.

*F. Proposed Revisions*

FEMA proposes to amend §§ 201.3–201.5, based on the reasons listed earlier in this preamble and to address the comments it has received from stakeholders. Every reference to FEMA Standard State and Enhanced State Mitigation Plan update requirements would be changed from 3 years to 5 years, so that it is consistent with current Local and Tribal Mitigation Plan update requirements. Based on stakeholder input received to date, FEMA is proposing that 5 years would be an appropriate timeframe for Standard State and Enhanced State Mitigation Plan updates.

*G. Implementation*

If the proposed revisions are adopted, the Standard State Mitigation Plan and the Enhanced State Mitigation Plan updates would be due 5 years from the date of the approval of the previous plan.

## III. Regulatory Analyses

*A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review*

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, Oct. 4, 1993) as supplemented by Executive Order 13563, ''Improving Regulation and Regulatory Review'' (76 FR 3821, Jan. 21, 2011). This proposed rule is not a significant regulatory action, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This portion of the preamble summarizes FEMA's analysis of the economic impacts of this proposed rule. However, readers seeking greater detail are encouraged to read the full regulatory evaluation, a copy of which FEMA has placed in the docket for this rulemaking.

In conducting the aforementioned analyses, FEMA has determined that the proposed rule: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) would not have a significant economic impact on a substantial number of small entities; and (4) would not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding $100 million or more annually (adjusted for inflation with a base year of 1995). These analyses are summarized below.

Who Is Potentially Affected by This Rule

The proposed rule would affect States [3] that choose to submit updated Standard State Mitigation Plans or Enhanced State Mitigation Plans to FEMA for approval, and Indian Tribal governments that choose to meet the requirements for Enhanced State Mitigation Plans in order to qualify for increased HMGP funding.

Savings to Society of This Rule

The cost to update a State's Mitigation Plan is unique to that respective State. However, for the purposes of this analysis, FEMA estimates an average Standarad State Mitigation Plan update unit cost of $205,000 and an Enhanced State Mitigation Plan update unit cost of $524,000. FEMA also assumes that 46 States would submit Standard State Mitigation Plans and 10 States would submit Enhanced State Mitigation Plans.

FEMA would also incur costs to review State Mitigation Plans. FEMA estimates that a General Schedule 13, Step 1, Federal employee, at a fully loaded wage of $48.08 ($34.34 * 1.4 = $48.076) would spend 120 hours reviewing a Standard or Enhanced State Mitigation Plan. The resulting FEMA review cost per plan is $5,770 (120 hours * $48.08 per hour = $5,769.60).

Therefore, the cost of State Mitigation Plan updates in a given year, where all

[3] As defined by section 102 of the Stafford Act, ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. 42 U.S.C. 5122 (2011).

updates are submitted, is approximately $15 million (($205,000 + $5,770) * 46 + ($524,000 + $5,770) * 10 = $14,993,120). The extension of the State Mitigation Plan update frequency from 3 to 5 years would reduce the number of State Mitigation Plan updates submitted by 2 over 15 years. The resulting undiscounted total cost savings is approximately $30 million over 15 years ($14,993,120 * 2 = $29,986,240); or, $18.8 million total cost savings over 15 years if discounted at 7 percent. The annual impact of this proposed rule is approximately $2 million undiscounted ($29,986,240 ÷ 15 = $1,999,083).

Benefits of This Rule

The proposed rule would provide a number of unquantified benefits including aligning the State Mitigation Plan update cycle with the Local and Tribal Mitigation Plan update cycle and providing greater flexibility for States to submit their State Mitigation Plan updates. The proposed rule would also provide an opportunity for States to apply cost savings from the reduction in State Mitigation Plan update frequency to other means of increasing resilience and reducing the Nation's risk to natural hazards.

Significance Determination

Under Executive Order 12866, a significant regulatory action is subject to the OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule is estimated to have a net quantified undiscounted savings to society of approximately $30 million over 15 years. The annual impact of this rule is an estimated net quantified savings to society of approximately $2 million undiscounted ($1,999,083). As such, this rule is not an economically significant regulatory action and has not been reviewed by OMB.

Retrospective Review

To facilitate the periodic review of existing significant regulations, Executive Order 13563 requires agencies to consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. The Executive Order requires agencies to issue a retrospective review plan, consistent with law and the agency's resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

The Department of Homeland Security issued its ''Final Plan for the Retrospective Review of Existing Regulations'' (Plan) on August 22, 2011. The Plan can be viewed at *http://www.dhs.gov/xlibrary/assets/dhs-ogc-final-retrospective-review-plan-8-22-11-final.pdf.* This rule was included in the Plan as a long-term retrospective review candidate, meaning the agency would undertake retrospective review of the regulation within 3 years of the date of the Plan. The Plan stated that FEMA would consider whether it would be more efficient to extend the review period to 5 years for each of the plans as requested by public commenters. Review of FEMA's existing Mitigation Plan regulations revealed the potential for State cost savings, approximately $30 million over 15 years, as well as other benefits. Therefore, FEMA is proposing to extend the State Mitigation Plan minimum update frequency from 3 to 5 years.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), FEMA evaluated and considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As the proposed rule would not result in additional costs, FEMA does not anticipate that the rule would have a significant economic impact on a substantial number of small entities. However, FEMA invites comments on this initial determination.

*C. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to assess the effects of their discretionary regulatory actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. As the proposed rule would not have an impact greater than $100,000,000 or more in any one year, it is not an unfunded Federal mandate.

*D. Paperwork Reduction Act (PRA) of 1995*

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

In this NPRM, FEMA is seeking a revision to the already existing collection of information identified as OMB Control Number 1660–0062, and withdraws the previous **Federal Register** notice regarding this information collection which published on February 24, 2012 (77 FR 11142). This revision reflects the reduction in the annual cost burden to respondents or recordkeepers resulting from the proposed rule, as well as refinements to current estimates in 1660–0062 based on changes to the way cost burden is reported under the PRA. Annual cost burden was previously derived from multiplying total annual burden hours, based on subject matter expert average hour estimates per mitigation plan, by the associated wage rates. However, FEMA has refined how it calculates annual costs and now uses cost estimates based on historical mitigation plan grant data, which includes contract support and other associated costs. This NPRM serves as the 60-day comment period for this proposed change pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the proposed collection of information.

Collection of Information

*Title:* State/Local/Tribal Hazard Mitigation Plans.

*Type of information collection:* Revision of a currently approved collection.

*OMB Number:* 1660–0062.

*Form Titles and Numbers:* None.

*Abstract:* The purpose of State, Local, and Tribal Hazard Mitigation Plan requirements is to support the administration of FEMA Mitigation grant programs, and a significant State, local, and Tribal commitment to mitigation activities, comprehensive mitigation planning, and strong program management. Implementation of planned, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals and prioritization to reduce risks from natural hazards. This proposed rule revises FEMA Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years. This reduction in frequency will result in a reduction of 8,899 hours in the burden hours on the public and a $1,350,580 reduction in the annual cost burden to respondents or recordkeepers resulting from the collection of information. Due to the change in reporting methods described above, the base line numbers have changed, resulting in an overall increase in the estimated total annual cost. This impact is separate from the effect of the proposed rule.

*Affected Public:* State, local, or Tribal Government.

*Estimated Number of Respondents:* 56 States submit State Mitigation Plan updates to FEMA. In addition, those 56 States also review and submit Local and Tribal Mitigation Plans and plan updates to FEMA.

*Estimated Total Annual Burden Hours:* 227,366 hours.

The previously approved Total Annual Burden Hours was 768,320 hours. Based on adjustments to how this burden was estimated (see Information Collection Request for details) and the proposed rule's reduction in burden, the new estimated Total Annual Burden Hours is 227,366 hours. This is a decrease of 540,954 hours, of which approximately 8,899 hours are attributed to the change in State Mitigation Plan update frequency. However, some of the burden hours previously accounted for likely reflected some of the costs, including contract support, now included in the separately-reported categories under total annual cost burden.

Table 3 provides estimates of annualized cost to respondents for the hour burdens for the collection of information.

TABLE 3

| Type of respondent | Form name/form number | Number of respondents | Number of responses per respondent [1] | Total number of responses [2] | Avg burden per response (hours) | Total annual burden (hours) | Avg hourly wage rate [3] | Total annual respondent cost [4] |
|---|---|---|---|---|---|---|---|---|
| Local or Tribal Government | New Local and Tribal Plans | 56 | 5 | 280 | 289 | 80,920 | $45.33 | $3,668,104 |
| Local or Tribal Government | Local and Tribal Plan Updates. | 56 | 9 | 504 | 249 | 125,496 | 45.33 | 5,688,734 |
| State Government | State Review of Local and Tribal Plans. | 56 | 14 | 784 | 8 | 6,272 | 45.33 | 284,310 |
| State Government | Standard State Plan Updates. | 46 | 0.2 | 9 | 1,040 | 9,360 | 45.33 | 424,289 |
| State Government | Enhanced State Plan Updates. | 10 | 0.2 | 2 | 2,659 | 5,318 | 45.33 | 241,065 |
| Total | | 56 | | 1,579 | | 227,366 | | 10,306,502 |

[1] Standard State Plan Updates and Enhanced State Plan Updates Number of Responses per Respondent represents an annual average over 5 years (1 plan update/5 years = 0.2).
[2] Standard State Plan Updates Total Number of Responses is rounded to the nearest plan.
[3] The ''Avg. Hourly Wage Rate'' for each respondent includes a 1.4 multiplier to reflect a loaded wage rate and rounded to the nearest cent.
[4] Rounded to the nearest dollar.

*Estimated Total Annual Cost:* $33,532,730.

The previously approved Total Annual Cost was $33,452,652. Based on adjustments to how this cost was estimated (see Information Collection Request for details) and the proposed rule's reduction in cost, the new estimated Total Annual Cost is $33,532,730. This is an increase of $80,078. This includes a $1,350,580 reduction in cost attributed to the change in State Mitigation Plan update frequency.

Table 4 provides estimates of total annual cost burden to respondents or recordkeepers resulting from the collection of information.

TABLE 4

| Data collection activity/instrument | *Annual capital start-up cost (investments in overhead, equipment and other one-time expenditures) | *Annual operations and maintenance cost (such as record-keeping, technical/professional services, etc.) | Annual non-labor cost (expenditures on training, travel and other resources) | Total annual cost to respondents |
|---|---|---|---|---|
| Development of New Local and Tribal Plans | $12,289,200 | | | $12,289,200 |
| Local and Tribal Plan Updates | | $16,299,360 | $2,716,560 | 19,015,920 |
| State Review of Local and Tribal Plans | | | | 0 |
| Standard State Mitigation Plan Updates | | 1,217,700 | 202,950 | 1,420,650 |
| Enhanced State Mitigation Plan Updates | | 691,680 | 115,280 | 806,960 |
| Total | 12,289,200 | 18,208,740 | 3,034,790 | 33,532,730 |

*Overall Estimated Total Cost:* $43,839,232.

The overall estimated cost of this collection is $43,839,232 ($10,306,502 + $33,532,730). This is an increase of $10,386,580 ($33,452,652–$43,839,232) from the currently approved OMB inventory.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*E. National Environmental Policy Act (NEPA) of 1969*

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires agencies to consider the impacts in their decision-making on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 through 1508, require Federal agencies to prepare Environmental Impact Statements (EIS) for major federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that typically do not trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process the agency will determine whether to make a Finding of No Significant Impact or whether to initiate the EIS process.

Rulemaking is a major federal action subject to NEPA. The *List of exclusion categories* at 44 CFR 10.8(d)(2)(ii) excludes the preparation, revision, and adoption of regulations from the preparation of an EA or EIS, where the rule relates to actions that qualify for categorical exclusions. The development of plans under 44 CFR Part 201 is categorically excluded under 44 CFR 10.8(d)(2)(iii) and (xviii)(E). No extraordinary circumstances exist that would trigger the need to develop an EA or EIS. See 44 CFR 10.8(d)(3). An EA will not be prepared because a categorical exclusion applies to this rulemaking action and no extraordinary circumstances exist.

*F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

This proposed rule would revise FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates from 3 to 5 years. Tribal Mitigation Plan updates are already required every 5 years; however, in accordance with 44 CFR 201.3(e)(3), Indian Tribal governments are potentially eligible to act as grantee and qualify for increased HMGP funding by submitting an Enhanced Mitigation Plan. Under the current regulations, Indian Tribal governments that wish to submit an Enhanced Mitigation plan are required to update that plan every 3 years; the proposed rule would reduce that frequency to every 5 years. For these reasons, this rule may have ''tribal implications'' as defined in the Executive Order. Submission of the plan, however, is voluntary, and changing the frequency of the plan from 3 to 5 years will not impose direct compliance costs on Indian tribal governments. Therefore, FEMA finds that this proposed rule complies with Executive Order 13175.

*G. Executive Order 13132, Federalism*

A rule has implications for federalism under Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. FEMA has analyzed this NPRM under the Executive Order and determined that it does not have implications for federalism.

This proposed rule would revise FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates, extending the update requirement from 3 to 5 years. As stated under the Stakeholder Involvement heading, FEMA has received substantial input requesting that FEMA change its Mitigation Planning regulations to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates. Some of those requests have come from State officials.

The Standard State and Enhanced State Mitigation Plan updates are voluntarily submitted by States. Per DMA 2000, Mitigation Plans are a condition of receipt of increased Federal funding for hazard mitigation measures. If a State chooses not to comply with the regulations in 44 CFR Part 201, it still would be eligible for limited emergency assistance under the Stafford Act. (See 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, and 5192).

*H. Executive Order 12630, Taking of Private Property*

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights'' (53 FR 8859, Mar. 18, 1988).

*I. Executive Order 12898, Environmental Justice*

Under Executive Order 12898, as amended, ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. Executive Order 12898 requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the

environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level.

This rule relates to the implementation of section 322 of the Stafford Act (42 U.S.C. 5165). Section 322 focuses specifically on mitigation planning to identify the natural hazards, risks, and vulnerabilities of areas in States, localities, and Tribal areas; development of Local Mitigation Plans; technical assistance to local and Tribal governments for mitigation planning; and identifying and prioritizing mitigation actions that the State will support as resources become available. The proposed reduction in burden from the update frequency may allow States to focus on implementing additional mitigation actions identified through the planning process as a means to increase resilience and reduce the Nation's risk to natural hazards; thereby also protecting human lives and the environment. No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

*J. Executive Order 12988, Civil Justice Reform*

This NPRM meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

*K. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

This NPRM will not create environmental health risks or safety risks for children under Executive Order 13045, ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, Apr. 23, 1997).

*L. Executive Order 11988, Floodplain Management*

FEMA has prepared and reviewed this rule under the provisions of Executive Order 11988, as amended, ''Floodplain Management'' (42 FR 26951, May 25, 1977). The regulations at 44 CFR Part 9 set forth FEMA's policy, procedures, and responsibilities in implementing this Executive Order. In summary, these are, to the greatest possible degree: To avoid long and short term adverse impacts associated with the occupancy and modification of floodplains; avoid direct and indirect support of floodplain development whenever there is a practical alternative; reduce the risk of flood loss; promote the use of nonstructural flood protection methods to reduce the risk of flood loss; minimize the impacts of floods on human health, safety and welfare; restore and preserve the natural and beneficial values served by floodplains; and adhere to the objectives of the Unified National Program for Floodplain Management.

As stated in the preamble, the planning process provides a link between State, Tribal and and local mitigation programs. Both State level and local plans should address strategies for incorporating post-disaster early mitigation implementation strategies and sustainable recovery actions. FEMA also recognizes that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference comprehensive plans, land use plans, master plans, and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as expediting implementation of measures and activities to reduce those risks, both pre- and post-disaster. This proposed rule revises FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates, extending the update requirement from 3 to 5 years. The proposed change aligns the State update requirements with Local and Tribal Mitigation Plan update requirements, which does not conflict with the intent of the Executive Order.

**List of Subjects in 44 CFR Part 201**

Administrative practice and procedure, Disaster assistance, Grant programs, and Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FEMA proposes to amend 44 CFR part 201, as follows:

## PART 201—MITIGATION PLANNING

■ 1. The authority citation for Part 201 continues to read as follows:

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. In § 201.3, revise paragraphs (b)(5), (c)(2), and (c)(3), and the second sentence of paragraph (e)(3) to read as follows:

**§ 201.3 Responsibilities.**

* * * * *

(b) * * *

(5) Conduct reviews, at least once every 5 years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

(c) * * *

(2) In order to be considered for the 20 percent HMGP funding, prepare and submit an Enhanced State Mitigation Plan in accordance with § 201.5, which must be reviewed and updated, if necessary, every 5 years from the date of the approval of the previous plan.

(3) At a minimum, review and update the Standard State Mitigation Plan every 5 years from the date of the approval of the previous plan in order to continue program eligibility.

* * * * *

(e) * * *

(3) * * * The plan must be reviewed and updated at least every 5 years from the date of approval of the previous plan.

■ 3. In § 201.4, revise the first sentence of paragraph (d) to read as follows:

**§ 201.4 Standard State Mitigation Plans.**

* * * * *

(d) * * * Plan must be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities and resubmitted for approval to the appropriate Regional Administrator every 5 years. * * *

■ 4. In § 201.5, revise the third sentence of paragraph (a), revise the first sentence of paragraph (c)(1), and revise paragraph (c)(2) to read as follows:

**§ 201.5 Enhanced State Mitigation Plans.**

(a) * * * In order for the State to be eligible for the 20 percent HMGP funding, FEMA must have approved the plan within 5 years prior to the disaster declaration.

* * * * *

(c) * * *

(1) A State must review and revise its plan to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities, and resubmit it for approval to the appropriate Regional Administrator every 5 years. * * *

(2) In order for a State to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the 5 years

prior to the current major disaster declaration.

Dated: February 22, 2013.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2013–04794 Filed 2–28–13; 8:45 am]

**BILLING CODE 9111–66–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. NHTSA 2012–0025]**

## Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking; Vehicle Rollover Resistance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This document denies a petition for rulemaking submitted by Mr. Michael Schramm requesting that the agency initiate rulemaking to establish a Federal motor vehicle safety standard (FMVSS) to prevent a vehicle from being steered into a rollover at any speed. Mr. Schramm has applied to patent a device he believes will enable vehicles to meet his requested standard. After review of Mr. Schramm's petition, we believe the petition lacks sufficient data to support proposing and promulgating a safety standard. Further, it might create conflicts with existing standard and consumer information metrics. Therefore, NHTSA is denying Mr. Schramm's petition.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues: Mr. John Lee, Office of Crash Avoidance Standards, NVS–123, Telephone: (202) 366–4924; Facsimile: 202–493–2739; Email: *john.lee@dot.gov.*

For legal issues: David Jasinski, NHTSA Office of Chief Counsel, NCC–112, Telephone: (202) 366–2992; Facsimile: 202–366–3820; Email: *david.jasinski@dot.gov.*

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** On September 30, 2010, Mr. Michael Schramm submitted a petition for rulemaking requesting that NHTSA establish a Federal motor vehicle safety standard (FMVSS) to prevent a vehicle from being steered into a rollover at any speed. Mr. Schramm suggested that NHTSA number and name this new standard FMVSS No. 140, ''Anti-Roll Steering.'' He supplied regulatory text for the requested FMVSS No. 140, a copy of his application for a patent for his rollover prevention apparatus (the apparatus), a copy of FMVSS No. 126, ''Electronic stability control systems,'' a copy of the preliminary regulatory impact analysis for FMVSS No. 126, and 2002 accident rollover data from the NHTSA Web site *www.safercar.gov.* The requested standard would restrict a vehicle's steering wheel from steering a vehicle into a rollover.

**Agency Response and Decision**

As stated in Mr. Schramm's petition, more than 10,000 people were killed in rollover crashes in 2002. However, in 2009, the rollover fatalities fell to 8,267, based on NHTSA's early release of annual fatality figures.[1] While there are several reasons for these reductions, we believe that the consumer information and rulemaking actions that NHTSA has been actively pursuing played a role in reducing fatalities and injuries from rollover crashes and will continue to reduce these numbers even more.

Since 2001, NHTSA's New Car Assessment Program (NCAP) has been rating vehicles for rollover resistance and making these ratings available to consumers on *www.safercar.gov* and in other agency publications. Initially, rollover resistance ratings were based solely on a vehicle's Static Stability Factor (SSF), a calculation that uses a vehicle's width and the height of its center of gravity to predict a vehicle's chance of rollover in a single vehicle crash.

In the Transportation, Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000, Congress directed NHTSA to develop a dynamic rollover test and to use information obtained in that test to help inform consumers about the rollover properties of vehicles. On October 14, 2003, NHTSA published a final policy establishing a ''fishhook'' test as the dynamic rollover test for NCAP.

The fishhook test is an objective and repeatable test capable of determining a vehicle's susceptibility to rolling over on-road. The fishhook maneuver uses steering inputs that approximate the steering a driver might use in a panic situation in an effort to regain lane position or to recover having gone off the road. The fishhook test is conducted at speeds up to 50 mph and in two symmetric steering inputs (left to right and right to left), with the final input of the test being approximately 270 degree. When the wheels on the same side of a vehicle simultaneously lift two or more inches off the ground, the vehicle fails the test.

The results of this test are noted on *www.safercar.gov* for every vehicle tested. As of 2004, rollover resistance ratings are based on both a vehicle's SSF and whether or not the vehicle tipped up in the fishhook test. In response to this rating program, as indicated by the improvement in ratings and the physical characteristics of the vehicles, vehicle manufacturers have made improvements to the rollover properties of the vehicle they produce. The agency has been able to document that some makes and models of vehicles have become wider, and have a centers of gravity that are lower to the ground than previous versions of similar makes and models, therefore improving their SSF and making them less susceptible to rollover.

On April 6, 2007, NHTSA established FMVSS No. 126, ''Electronic stability control systems,'' (ESC) to help reduce rollover and other types of loss of control crashes. ESC systems use automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations where the vehicle is beginning to lose directional control at the rear wheels (spin out) or directional control at the front wheels (plow out). NHTSA estimates that ESC has the potential to prevent 71 percent of passenger vehicle rollovers that would otherwise occur in single vehicle crashes. The agency further estimates that ESC will save 5,300 to 9,600 lives and prevent 156,000 to 238,000 injuries in all types of crashes annually once all light vehicles on the road are equipped with ESC systems. Many automotive manufacturers equipped their vehicles with ESC prior to the September 1, 2011 date for full compliance with FMVSS No. 126.

On May 12, 2009, NHTSA upgraded FMVSS No. 216, ''Roof crush resistance,'' to improve roof strength to reduce the risk of death and serious injury in rollover crashes. The amendments double the current roof strength requirement for light vehicles weighing up to 6,000 pounds. It specifies that both the driver and passenger sides of the roof must be capable of withstanding a force equal to three times the weight of the vehicle applied to one side of the roof, up from the current 1.5 times the weight of the

[1] See Traffic Safety Facts 2009 (Early Edition), Table 23: Passenger Car and Light Truck Occupants Killed, by Vehicle Type and Rollover Occurrence, 1982–2009.

vehicle. Phase-in of the requirement began in September 2012 and will be completed for all affected vehicles by the 2017 model year. It is estimated the tougher roof crush requirements will prevent 135 fatalities and 1,065 non-fatal injuries annually.

On January 19, 2011, NHTSA published a final rule establishing FMVSS No. 226, ''Ejection mitigation,'' to reduce the partial and complete ejection of vehicle occupants through side windows in crashes, particularly rollover crashes. Under the new rule, vehicle manufacturers must develop a countermeasure for light passenger vehicles under 4,536 kilograms (10,000 pounds) that prevents an 18 kilogram (40 pound) linear impactor from moving more than 100 millimeters (4 inches) past the side window opening. The new standard will begin phasing in on September 1, 2013. All newly manufactured vehicles will be required to provide this protection by September 1, 2017. When fully implemented, this standard will, the agency believes, prevent on average 373 fatalities and 476 serious injuries every year.

After carefully reviewing the attachments to Mr. Schramm's petition, we noted that the regulatory text for the requested standard was not complete and values for the steering rate in the Anti-Roll Steering Test were left blank. Determining those values would take additional resources to complete. We also note that while data for FMVSS No. 126 was supplied in Mr. Schramm's petition, we do not believe this data is relevant for promulgating a safety standard for Mr. Schramm's apparatus. As such, the petitioner did not provide any data that would support the granting of his petition.

We further note there might be a safety risk due to the lack of steering responsiveness of Mr. Schramm's apparatus that may cause unintended deaths and injuries as a result of drivers colliding into objects they were trying to avoid. It was also noted that the steer-limiting requirement of the petitioner's requested test procedure might prevent the agency from conducting ESC compliance tests. Also, the agency might not be able to conduct the fishhook test it developed in response to the Congressional call for a dynamic test whose results Congress said must be used in developing information for consumers on the rollover resistance properties of vehicles. In conclusion, we believe Mr. Schramm's petition provides no data to demonstrate that his requested standard would result in any safety benefits. Further, adoption of the requested standard might create conflicts with existing safety standards. Therefore, his petition is denied.

Issued on: February 19, 2013.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2013–04759 Filed 2–28–13; 8:45 am]

**BILLING CODE 4910–59–P**

# Notices

Federal Register
Vol. 78, No. 41
Friday, March 1, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Public Information Collection Requirements Submitted to OMB for Review

**SUMMARY:** U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–5007.

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* OMB 0412–0549.

*Form Number:* AID 302–3.

*Title:* Offeror Information for Personal Services.

*Type of Submission:* New Information Collection.

*Purpose:* United States Agency for International Development must collect information for reporting purposes to Congress and Office of Acquisition and Assistance Contract Administration. This collection is to gather information from applicants applying for personal services contractor positions. This form will be utilized to collect information to determine the most qualified person for a position without gathering information which may lead to discrimination or bias information towards or gathered from applicant.

**Annual Reporting Burden**

*Respondents:* 5000.

*Total annual responses:* 10,000.

*Total annual hours requested:* 10,000.

Dated: February 22, 2013.

**Lynn P. Winston,**

*Chief, Bureau for Management, Office of Management Services, Information and Records Division, U.S. Agency for International Development.*

[FR Doc. 2013–04720 Filed 2–28–13; 8:45 am]

**BILLING CODE 6116–01–M**

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of March 14 Advisory Committee on Voluntary Foreign Aid Meeting

**AGENCY:** United States Agency for International Development.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

*Date:* Thursday, March 14, 2013.

*Time:* 2:00 p.m. to 5:00 p.m.

*Location:* Ronald Reagan Building, 1300 Pennsylvania Ave. NW., Washington, DC 20523.

**Agenda**

USAID Administrator Rajiv Shah will make opening remarks, followed by panel discussions among ACVFA members and USAID leadership, and an open Q&A. A draft agenda, room location, and additional information will be forthcoming on the ACVFA Web site at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

**Stakeholders**

The meeting is free and open to the public. Persons wishing to attend should register online at *http://www.usaid.gov/who-we-are/organization/advisory-committee/get-involved.*

**FOR FURTHER INFORMATION CONTACT:** Sandy Stonesifer, 202–712–4372.

Dated: February 22, 2013.

**Sandy Stonesifer,**

*Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.*

[FR Doc. 2013–04640 Filed 2–28–13; 8:45 am]

**BILLING CODE P**

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Board for International Food and Agricultural Development; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the public meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 12:30 p.m. on March 15, 2013 at the University of Missouri Reynolds Journalism Institute, S. 9th Street, Columbia, MO 65201. The central theme of this meeting will center on ''Globalization of agriculture and food research at land-grant universities: BIFAD public meeting at University of Missouri.''

Dr. Brady Deaton, BIFAD Chair and Chancellor of the University of Missouri at Columbia, will preside over the meeting.

The public meeting will begin promptly at 8:00 a.m. with opening remarks by BIFAD Chair Brady Deaton. The Board will address both old and new business during this time and hear updates from USAID, including reports on outreach visits by three BIFAD members. USAID will provide updates on the Higher Education Solutions Network and the Bureau for Food Security Feed the Future Food Security Innovation Center. This will be followed by a panel on global research priorities related to Sustainable Intensification and Integrated Pest Management as related to refinement of current USAID/BFS research focus areas and programmatic choices. A second panel will focus on agricultural research at U.S. universities in the context of global challenges. Time will then be allowed for public comment. Following this period, the Chair will adjourn the meeting.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Susan Owens, Executive Director and Designated Federal Officer for BIFAD. Interested persons may write to her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue NW., Room 2.10–

214, Washington, DC 20523–2110 or telephone her at (202) 712–0218.

**Susan Owens,**

*USAID Designated Federal Officer for BIFAD, Bureau for Food Security, U.S. Agency for International Development.*

[FR Doc. 2013–04746 Filed 2–28–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 25, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Food and Nutrition Service

*Title:* Determining Eligibility for Free and Reduced Price Meals and Free Milk, 7 CFR Part 245.

*OMB Control Number:* 0584–0026.

*Summary of Collection:* The Richard B. Russell National School Lunch Act (NSLA), as amended, authorizes the National School Lunch Program (NSLP). Section 9, Paragraph 9(b) of the NSLA provides that the income guidelines for determining eligibility for free school meals shall be 130 percent, and reduced price school meals shall be 185 percent, of the applicable family size income level contained in the non-farm income poverty guidelines proscribed by the Office of Management and Budget, as adjusted annually. 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, sets forth policies and procedures for implementing these provisions. These federal regulations requires schools operating the NSLP to determine children's eligibility for free and reduced-price meals on the basis of each child's household income and size, and to establish operating procedures that will prevent physical segregation, or other discrimination against, or overt identification of children unable to pay the full price for meals or milk. Section 104 of the Child Nutrition and WIC Reauthorization Act of 2004 added section 9(b)(4) to the NSAL (42 U.S.C. 1758(b)(4)) to require local education agencies to directly certify, without further application, any child who is a member of a household receiving Supplemental Nutrition Assistance Program (SNAP) benefits.

*Need and Use of the Information:* FNS will collect information to determine eligibility of children for free and reduced price meals and for free milk using form FNS–742, and assure that there is no physical segregation of, or other discrimination against, or overt identification of children unable to pay the full price for meals or milk.

*Description of Respondents:* Individuals or household; State, Local, or Tribal Government.

*Number of Respondents:* 8,303,871.

*Frequency of Responses:* Recordkeeping; Reporting: Other (3 times a year); Annually.

*Total Burden Hours:* 965,582.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer .*

[FR Doc. 2013–04789 Filed 2–28–13; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, Department of Commerce.

**ACTION:** Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[2/1/2013 through 2/22/2013]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Eilers Machine & Welding, Inc. ..... | 600 E. Commerce Road, Lexington, NE 68850. | 2/21/2013 | Company's articles are made from metals, using metal fabrication processes: Cutting, bending, welding, and other. Components are then used by other businesses to make final goods. |

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—Continued

[2/1/2013 through 2/22/2013]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Principal Manufacturing Corporation. | 2800 S. 19th Avenue, Broadview, IL 60155. | 2/21/2013 | The firm manufactures automotive stampings. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: February 22, 2013.

**Miriam Kearse,**

*Eligibility Examiner.*

[FR Doc. 2013–04755 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–77–2012]**

### Foreign-Trade Zone 93—Raleigh-Durham, NC; Authorization of Production Activity; Revlon Consumer Products Corporation (Hair Coloring Products); Oxford, NC

On October 10, 2012, Revlon Consumer Products Corporation, the operator of FTZ 93G, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Revlon Consumer Products Corporation, within Subzone 93G, in Oxford, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 65856–65857, 10/31/12). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: February 19, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–04843 Filed 2–28–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–17–2013]**

### Foreign-Trade Zone 84—Houston, TX; Notification of Proposed Production Activity; Toshiba International Corporation (Hybrid Electric Vehicle Motors and Generators Production)

The Port of Houston Authority, grantee of FTZ 84, submitted a notification of proposed production activity on behalf of Toshiba International Corporation (Toshiba), located in Houston, Texas. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on February 11, 2013.

The Toshiba facility is located at 13131 West Little York Road, Houston (Harris County), Texas. A separate application for subzone status at the Toshiba facility is planned and will be processed under Section 400.31 of the Board's regulations. The facility is used for the production of electric motors and generators for hybrid electric vehicles (HEV). Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products included in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Toshiba from customs duty payments on the foreign status components used in export production. On its domestic sales, Toshiba would be able to choose the duty rates during customs entry procedures that apply to electric motors and generators (duty rates range from free to 2.5%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Plastic film, strips and sheets, synthetic textile cord, cloth for technical uses, steel nuts and washers, parts of motors and generators, permanent magnets, variable resistors, electric terminals and couplings, electric synchros and transducers (duty rates range from free to 4.2%). Toshiba has indicated that the textile cord would be admitted to the proposed subzone in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 10, 2013.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact *Diane.Finver@trade.gov* or (202) 482–1367.

Dated: February 26, 2013.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2013–04837 Filed 2–28–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**Background**

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

**Upcoming Sunset Reviews for April 2013**

The following Sunset Reviews are scheduled for initiation in April 2013 and will appear in that month's Notice of Initiation of Five-Year Sunset Review. With respect to the orders on Light-Walled Rectangular Pipe and Tube, we have advanced the initiation date of certain Sunset Reviews upon determining that initiation of the Sunset Reviews for all of the Light-Walled Rectangular Pipe and Tube orders on the same date would promote administrative efficiency.

| | Department contact |
|---|---|
| **Antidumping Duty Proceedings** | |
| Light-Walled Rectangular Pipe and Tube from China (A–570–914) (1st Review) | Jennifer Moats, (202) 482–5047. |
| Light-Walled Rectangular Pipe and Tube from Korea (A–580–859) (1st Review) | Dana Mermelstein, (202) 482–1391. |
| Light-Walled Rectangular Pipe and Tube from Mexico (A–201–836) (1st Review) | Dana Mermelstein, (202) 482–1391. |
| Light-Walled Rectangular Pipe and Tube from Turkey (A–489–815) (1st Review) | Dana Mermelstein, (202) 482–1391. |
| Polyethylene Terephthalate (Pet) Film from India (A–533–824) (2nd Review) | Dana Mermelstein, (202) 482–1391. |
| Polyethylene Terephthalate (Pet) Film from Taiwan (A–583–837) (2nd Review) | Dana Mermelstein, (202) 482–1391. |
| **Countervailing Duty Proceedings** | |
| Polyethylene Terephthalate (Pet) Film from India (C–533–825) (2nd Review) | Dana Mermelstein, (202) 482–1391. |
| Light-Walled Rectangular Pipe and Tube from China (C–570–915) (1st Review) | David Goldberger, (202) 482–4136. |

**Suspended Investigations**

No Sunset Review of suspended investigations is scheduled for initiation in April 2013.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 22, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013–04838 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**FOR FURTHER INFORMATION CONTACT:** Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

**Background**

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR 351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

**Respondent Selection**

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

**Deadline for Withdrawal of Request for Administrative Review**

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after March 2013, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

**Correction**

In the Opportunity to Request Administrative Reviews notice that published on February 1, 2013 (78 FR 7397) the Department listed the incorrect case number for Frozen Warmwater Shrimp from the Socialist Republic of Vietnam. The correct case number is A–552–802.

*Opportunity to Request a Review:* Not later than the last day of March 2013,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

| | Period of review |
|---|---|
| **Antidumping Duty Proceedings** | |
| Canada: Iron Construction Castings, A–122–503 | 3/1/12–2/28/13 |
| France: Brass Sheet & Strip, A–427–602 | 3/1/12–2/28/13 |
| Germany: Brass Sheet & Strip, A–428–602, | 3/1/12–2/28/13 |
| India: Sulfanilic Acid, A–533–806 | 3/1/12–2/28/13 |
| Italy: Brass Sheet & Strip, A–475–601 | 3/1/12–2/28/13 |
| Russia: Silicon Metal, A–821–817 | 3/1/12–2/28/13 |
| Spain: Stainless Steel Bar, A–469–805 | 3/1/12–2/28/13 |
| Taiwan: | |
| Light-Walled Rectangular Welded Carbon Steel Pipe and Tube, A–583–803 | 3/1/12–2/28/13 |
| Polyvinyl Alcohol, A–583–841 | 3/1/12–2/28/13 |
| Thailand: Circular Welded Carbon Steel Pipes and Tubes, A–549–502 | 3/1/12–2/28/13 |
| The People's Republic of China: | |
| Chloropicrin, A–570–002 | 3/1/12–2/28/13 |
| Circular Welded Austenitic Stainless Pressure Pipe, A–570–930 | 3/1/12–2/28/13 |
| Drill Pipe, A–570–965 | 3/1/12–2/28/13 |
| Glycine, A–570–836 | 3/1/12–2/28/13 |
| Sodium Hexametaphosphate, A–570–908 | 3/1/12–2/28/13 |
| Tissue Paper Products, A–570–894 | 3/1/12–2/28/13 |
| **Countervailing Duty Proceedings** | |
| India: Sulfanilic Acid, C–533–807 | 1/1/12–12/31/12 |
| Iran: In-Shell Pistachio Nuts, C–507–501 | 1/1/12–12/31/12 |
| The People's Republic of China: | |
| Circular Welded Austenitic Stainless Pressure Pipe, C–570–931 | 1/1/12–12/31/12 |
| Drill Pipe, C–570–966 | 1/1/12–12/31/12 |
| Turkey: Circular Welded Carbon Steel Pipes and Tubes, C–489–502 | 1/1/12–12/31/12 |

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

**Suspension Agreements**

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://trade.gov/ia.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2013. If the Department does not receive, by the last day of March 2013, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 21, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013–04840 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–DS–P**

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before March 21, 2013. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

*Docket Number:* 13–001. *Applicant:* Oregon Health and Science University, 3181 SW Sam Jackson Park Rd., Portland, OR 97239. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used to obtain a powerfully detailed picture of the architecture of the molecular signals that function in normal and diseased tissues at the molecular, cell, tissue and organism levels. The data will be used to improve management of human diseases including cancer, cardiovascular disease, immunodeficiency and dementia. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* January 8, 2013.

*Docket Number:* 13–003. *Applicant:* Howard Hughes Medical Institute, 4000 Jones Bridge Rd., Chevy Chase, MD 20815. *Instrument:* Electron Microscope. *Manufacturer:* FEI, the Netherlands. *Intended Use:* The instrument will be used to examine biological specimens such as protein complexes, noninfectious virus, and small cells, to help elucidate function. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* February 11, 2013.

*Docket Number:* 13–004. *Applicant:* Georgia Institute of Technology, 901 Atlantic Dr., Atlanta, GA 30332.

*Instrument:* Electron Microscope. *Manufacturer:* Hitachi High-Technologies Corp., Japan. *Intended Use:* The instrument will be used to observe the shape, size, crystal structure and composition of nanoparticles including metal nanocrystals, metal-oxide nanocrystals, and their combinations. The growth mechanism and properties of the materials will be investigated for biomedical and catalysis applications. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* February 11, 2013.

*Docket Number:* 13–005. *Applicant:* Case Western Reserve University, 10900 Euclid Ave., Cleveland, OH 44106–4965. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to determine the three-dimensional structure at near-atomic (3–10Å) resolution for macromolecular (protein) complexes and at 20–30Å for tissue samples. Samples will include cryogenically frozen soluble and membrane proteins, protein complexes, protein/DNA and protein/RNA complexes, human, animal and plant viruses, and viral vectors (only noninfectious or in BioSafety Level 2 category) and tissue samples such as isolated mouse retinal cells. The objectives to be pursued include understanding the structure and conformational change of assemblies involved in biological processes such as ATP production, signal transduction, and DNA repair. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* February 5, 2013.

*Docket Number:* 13–006. *Applicant:* Oregon Health and Science University, 3181 SW Sam Jackson Park Rd., Portland, OR 97239. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, the Netherlands. *Intended Use:* The instrument will be used to obtain a powerfully detailed picture of the architecture of the molecular signals that function in normal and diseased tissues at the molecular, cell, tissue and organism levels. The data will be used to improve management of human diseases including cancer, cardiovascular disease, immunodeficiency and dementia. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* February 11, 2013.

Dated: Feburary 25, 2013.

**Gregory W. Campbell,**

*Director of Subsidies Enforcement, Import Administration.*

[FR Doc. 2013–04842 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 85–17A18]**

### Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Amended Export Trade Certificate of Review to U.S. Shippers Association.

**SUMMARY:** The Secretary of Commerce, through the International Trade Administration, Office of Competition and Economic Analysis (OCEA), has issued an amended Export Trade Certificate of Review (''Certificate'') to the U.S. Shippers Association (''USSA'') on February 15, 2013. USSA's application to amend its Certificate was announced in the **Federal Register** on December 5, 2012 (77 FR 72324). The original Certificate No. 85–00018 was issued to USSA on June 3, 1986 (51 FR 20873). The previous amendment (No. 85–16A18) was issued to USSA on August 9, 2010 (75 FR 50747).

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or Email at *etca@trade.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2012).

OCEA is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Amendments to the Certificate**

1. Add the following new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Phibro Animal Health Corporation of Teaneck, NJ and Altimore Consultants, LLC of Needville, TX.

2. Delete the following Members from USSA's Certificate: Hexion Specialty Chemicals, Houston, TX; KRATON Polymers U.S. LLC, Houston, TX; Sartomer USA, LLC, Exton, PA; Shell Chemical and Oil Products Companies, Houston, TX; and Taminco, Inc., Taminco Higher Amines, Inc., and Taminco Methylamines, Inc., Allentown, PA.

The effective date of the amended certificate is November 21, 2012, the date on which USSA's application to amend was deemed submitted. A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: February 22, 2013.

**Jeffrey Anspacher,**

*Senior Economist, Export Trading Company Affairs.*

[FR Doc. 2013–04781 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Application No. 99–5A002]**

### Export Trade Certificate of Review

**ACTION:** Notice of Application (99–5A002) to amend the Export Trade Certificate of Review Issued to California Almond Export Association, Application No. 99–5A002.

**SUMMARY:** The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

**Request for Public Comments**

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 99–5A002.''

The California Almond Export Association, LLC original Certificate was issued on December 27, 1999 (65 FR 760) and last amended on June 8, 2010 (75 FR 35441). A summary of the current application for an amendment follows.

**Summary of the Application**

*Applicant:* California Almond Export Association, LLC (''CAEA''), 4800 Sisk Road Modesto, CA 95356.

*Contact:* Bill Morecraft, Chairman, Telephone: (916) 446–8537.

*Application No.:* 99–5A002.

*Date Deemed Submitted:* February 19, 2013.

*Proposed Amendment:* CAEA seeks to amend its Certificate to:

1. Add the following company as a new Member of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Roche Brothers International (Escalon, CA).

2. Delete the following company as a Member of CAEA's Certificate: Quality Nut Co. (Escalon, CA).

Dated: February 22, 2013.

**Jeffrey Anspacher,**

*Senior Economist, Office of Competition and Economic Analysis.*

[FR Doc. 2013–04784 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Five-Year (''Sunset'') Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty order listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order.

**DATES:** *Effective Date:* (March 1, 2013)

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3 –*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998), and in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

**Initiation of Review**

In accordance with 19 CFR 351.218(c), we are initiating a Sunset Review of the following antidumping duty order:

| DOC Case No. | ITC Case No. | Country | Product | Department contact |
|---|---|---|---|---|
| A–570–847 ..... | 731–TA–749 ..... | China ..... | Persulfates (3rd Review) ..... | Jennifer Moats, (202) 482–5047. |

**Filing Information**

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''), can be found at 19 CFR 351.303. *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

This notice serves as a reminder that any party submitting factual information

in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

**Information Required From Interested Parties**

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: February 21, 2013.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2013–04821 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC521**

### Marine Mammals; File No. 16632

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that the NMFS Pacific Islands Fisheries Science Center, Hawaiian monk seal Research Program (Responsible Party, Frank Parrish), has applied in due form for a permit to conduct research on and enhancement of Hawaiian monk seals (*Monachus schauinslandi*).

**DATES:** Written, telefaxed, or email comments must be received on or before April 15, 2013.

**ADDRESSES:** The application and related documents are available for review on the following Web site: *http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonksealeis.htm.* The application is also available by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16632 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

Written comments on this application should be submitted to the Chief, Permits, and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *monkseal@noaa.gov*. Please include the File No. 16632 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Colette Cairns, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests a 5-year permit to carry out research and enhancement

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

activities designed to recover the endangered Hawaiian monk seal. Activities would occur along beaches and nearshore waters throughout the Hawaiian Archipelago (Northwestern Hawaiian Islands [NWHI] and main Hawaiian Islands [MHI]) and Johnston Atoll.

Research is intended to identify impediments to recovery, inform the design of conservation interventions, and evaluate those measures. Research activities include visual and photographic monitoring, tagging, pelage bleach marking, health screening, foraging studies, deworming research, experimental translocation, necropsies, tissue sampling, import/export of parts, behavioral modification research, and vaccination research.

Enhancement activities are designed to improve the survival and reproductive success of individual monk seals, with the intent to improve subpopulation and overall species' status. Enhancement activities include deworming, translocation, hazing and removal of aggressive adult male seals that harm or kill other seals, disentangling, dehooking, treating injured seals in-situ, behavioral modification, vaccination, and supplemental feeding of post-release rehabilitated seals.

The number of seals to be taken by take type (annually, unless otherwise specified) would be 2,115 monitoring; 620 tagging and 35 sonic tagging; 1,495 bleach marking; 130 health screening; 10 moribund seals by euthanasia; 60 instrumentations; 300 de-worming treatments; translocations of nursing pups to birth or foster mother as warranted (estimated 20 pups); translocations of weaned pups to alleviate risk as warranted (estimated 60 seals); 20 translocations of weaned pups and 30 juvenile/subadults as part of two-stage translocation for enhancement (no seals would be moved from the NWHI to the MHI as part of two-stage translocation); 6 translocations of juveniles/subadults/adults for research; hazing aggressive adult males from conspecifics as warranted (estimated 10 seals); 20 adult male removals (including up to 10 lethal removals over five years); 10 captive adult males treated with testosterone reduction drug; unlimited (i.e., as warranted) disentanglements, dehookings, in-situ treatments, necropsies, opportunistic samplings and import/export (world-wide, including import and export of Mediterranean monk seal (*Monachus monachus*) samples); 12 seals supplementary fed; 20 seals subject to behavioral modification; 1,100 seals vaccinated; and 400 seals incidentally harassed. The following lethal takes are annually/not to exceed in five years: 2/4 seals during research, 2/4 weaned pups during enhancement, 4/8 juveniles/subadults during enhancement, and 2/4 adult males during enhancement. Research on captive monk seals to test and validate field studies is also proposed. Up to 500 spinner dolphins (*Stenella longirostris*), and 20 bottlenose dolphins (*Tursiops truncatus*) may be incidentally harassed annually during research and enhancement activities.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS is preparing a Final Programmatic Environmental Impact Statement (PEIS) for Hawaiian monk seal Recovery Actions. A Draft PEIS for Hawaiian monk seal Recovery Actions was made available to the public in 2011 (76 FR 51945). The intent of the PEIS is to evaluate the potential direct, indirect, and cumulative impacts on the human environment of the alternative approaches to implementing recovery actions, including research and enhancement activities requiring a permit. Information about the PEIS is available on the following Web site: *http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonksealeis.htm.*

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding a copy of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: February 26, 2013.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–04751 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC266**

### Atlantic Highly Migratory Species; Exempted Fishing, Scientific Research, Display, and Chartering Permits; Letters of Acknowledgment

**AGENCY:** National Marine Fisheries Service (NMFS or we), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; Summary of Comments Received.

**SUMMARY:** We announce the availability of public comments received regarding our intent to issue Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), and Chartering Permits for the collection of Atlantic highly migratory species (HMS) in 2013. On November 20, 2012, we published a Notice of Intent (NOI) announcing our intent to issue these permits in 2013. In general, EFPs and related permits would authorize collection of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display. Comments were accepted on the NOI until December 20, 2012.

**ADDRESSES:** The 2012 NOI comments received and additional information concerning the Atlantic HMS Exempted Fishing Permit program are available from Craig Cockrell or Michael Clark, Highly Migratory Species Management Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Silver Spring, MD 20910. Comments received on the NOI are posted on the Atlantic Highly Migratory Species Management Division's Web site: *http://www.nmfs.noaa.gov/sfa/hms/.*

**FOR FURTHER INFORMATION CONTACT:** Craig Cockrell or Michael Clark, phone: (301) 427–8503, fax: (301) 713–1917.

**SUPPLEMENTARY INFORMATION:** On November 20, 2012, we published a Notice of Intent (NOI) announcing our intent to issue EFPs, SRPs, Display Permits, LOAs, and Chartering permits for the collection of HMS in 2013. In general, EFPs and related permits would authorize the collection and tagging of a limited number of tunas, swordfish, billfishes, and sharks from Federal waters in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico for the purposes of scientific data collection and public display. Comments were accepted on the NOI until December 20, 2012.

In general, the goal of the annual NOI to issue EFPs, SRPs, Display Permits, and Chartering Permits is to inform the public that the Agency may receive applications for research and other purposes in 2013. Regulations specific to the Atlantic HMS EFP program at 50 CFR 635.32 (a)(1) indicate that ''consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, we may authorize activities otherwise prohibited by the regulations contained in this part for the conduct of scientific research, the acquisition of information and data, the enhancement of safety at sea, the purpose of collecting animals for public education or display, the investigation

of bycatch, economic discard and regulatory discard, or for chartering arrangements.'' Further, 50 CFR 635.32 (g) indicates ''we may consolidate requests for the purpose of obtaining public comment for Atlantic HMS EFPs. In such cases, we may file with the Office of the Federal Register, on an annual or more frequent basis as necessary, a notification of previously authorized activities and information concerning applications that we may receive in the forthcoming year.'' The annual NOI meets the requirements of both 50 CFR 635.32 (a)(1) and 50 CFR 600.745 in most cases and, in cases where the requested activity is outside the scope of general scientific sampling and tagging, a separate notice is provided. Other relevant information related to the statutory authority for issuance of EFPs and related permits is described in the NOI published on November 20, 2012, and is not repeated here.

The majority of EFPs and related permits described within the annual NOI relate to scientific sampling and tagging of Atlantic HMS. The majority of these types of permits and the impacts of the activities conducted under these permits have been previously analyzed in various environmental assessments and environmental impact statements for Atlantic HMS. As such, generally, we do not receive significant comments from the public. Because our intent to issue such permits has not changed, we will issue these types of permits without public comment beyond the opportunity provided in the annual NOI. However, occasionally we do receive applications for permits that were not anticipated or where the research being conducted is outside the scope of general scientific sampling and tagging of Atlantic HMS. When we receive such applications, we will provide the public additional opportunity to comment, consistent with regulations in 50 CFR 600.745.

On the November 2012 NOI, we received numerous public comments, the majority of which expressed concern regarding EFP applications that may request access to the Florida East Coast or Charleston Bump time/area closures using pelagic longline vessels to conduct research. Commenters on this subject did not support this type of research. At this time, we have not received any applications requesting access to these, or other closed areas, using pelagic longline vessels. Rather, similar to NOIs published in the past for the Atlantic HMS EFP program, the goal of this past NOI was to inform the public that the Agency may be receiving applications for this type of research in 2013. As is true for any application, if applications are received in 2013 that are beyond the scope of the NOI, we would complete additional analyses evaluating the impacts on the human environment of this type of research and, if warranted, allow additional opportunity for the public to comment on the proposed activities before issuing any formal authorization or EFP. Specifically on closed area research, compensation fishing, and aquaculture requests that require exemption from regulation, we will provide additional opportunities for public comment when complete applications are received and necessary analyses have been conducted.

We also received comments in opposition to the issuance of EFPs for the culture of bluefin tuna without additional opportunity for public comment. This comment stemmed from the issuance of an EFP in 2012 to scientists interested in conducting experiments to culture yellowfin and bluefin tuna in land-based recirculating tanks. The 2012 EFP authorized the collection of up to six yellowfin and bluefin tuna using rod and reel. The 2012 permit was issued without the Agency seeking additional public comment on the activity because of the limited scope of the activity and the fact that no tuna captured under the authority of the permit would be sold or released back into the ocean. The applicants did not catch any bluefin tuna that were under the recreational size limit in 2012. As stated above, due in part to the comment received on the NOI, we will provide additional opportunities for public comment when complete applications on aquaculture, closed area research, or compensation fishing are received and necessary analyses have been conducted.

A comment was received citing a requirement at 50 CFR 600.745 (b)(3)(i) that we seek public comment for 15–45 days on every application, prior to issuing a permit. As described above, we believe the annual NOI provides the opportunity for public comment in most cases. However, we will provide additional opportunity for the public to comment in 2013 if applications are beyond the scope of general scientific sampling and tagging of HMS, and specifically for any applications received that involve aquaculture, closed area research, or compensation fishing.

We also received several comments in support of issuance of Display Permits for collection of Atlantic HMS for public display and education.

Final decisions on the issuance of any EFPs, SRPs, Display Permits, and Chartering Permits will depend on the submission of all required information about the proposed activities; public comments received on the November 20, 2012, NOI; an applicant's reporting history on past permits issued, any prior violations of marine resource laws administered by NOAA; consistency with relevant NEPA documents; and any consultations with appropriate Regional Fishery Management Councils, states, or Federal agencies. We do not anticipate any significant environmental impacts from the issuance of EFPs and related permits as assessed in the 1999 Fishery Management Plan, Amendment 2 to the 2006 Consolidated HMS FMP, 2011 Bluefin Tuna Specifications, and 2012 Swordfish Specifications.

**Authority:** 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: February 26, 2013.

**Kara Meckley,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–04820 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC462**

### Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; issuance of Letters of Authorization (LOA).

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued one-year LOAs to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

**DATES:** These authorizations are effective from February 27, 2013 through July 19, 2013.

**ADDRESSES:** The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at:

*http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (who has delegated the authority to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notice and opportunity for public comment, that the total taking over the five-year period will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to EROS were published on June 19, 2008 (73 FR 34875), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*). NMFS received requests for LOAs from Energy Resource Technology GOM, Inc. (ERT) and Demex International, Inc. (Demex) for activities covered by EROS regulations.

**Reporting**

NMFS Galveston Laboratory's Platform Removal Observer Program (PROP) has provided reports for ERT's removal of offshore structures during 2012. Demex does not have reports for any operations to date. NMFS PROP observers and non-NMFS observers reported the following during ERT's EROS operations in 2012:

| Company | Structure | Dates | Marine mammals sighted (individuals) | Biological impacts observed to marine mammals |
|---|---|---|---|---|
| ERT ..... | South Marsh Island Area, Block 15, Platform A. | May 2 to 7, 2012 | Bottlenose dolphins (99) ..... | None. |
| ERT ..... | East Cameron Area, Block 185, Platform C. | May 8 to 14, 2012 | Spotted dolphins (28); Unidentified dolphins (6). | None. |
| ERT ..... | East Cameron Area, Block 184, Platform A. | May 15 to 21, 2012. | Bottlenose dolphins (25); Spotted dolphins (13). | None. |
| ERT ..... | Vermilion Area, Block 162, Platform C. | May 20 to 23, 2012. | Spotted dolphins (23) ..... | None. |
| ERT ..... | Vermilion Area, Block 250, Platform I. | May 23 to June 2, 2012. | None ..... | None. |
| ERT ..... | Vermilion Area, Block 182, Platform JA. | June 3 to 8, 2012 | Spotted dolphins (22) ..... | None. |
| ERT ..... | South Timbalier Area, Block 63, Caisson #18. | June 3 to 4, 2012; June 17 to 19, 2012. | Bottlenose dolphins (51) ..... | None. |
| ERT ..... | South Timbalier Area, Block 63, Caisson #23. | June 5 to 8, 2012 | Bottlenose dolphins (19) ..... | None. |
| ERT ..... | Vermilion Area, Block 182, Platform JB. | June 8 to 15, 2012. | Spotted dolphins (22) ..... | None. |
| ERT ..... | South Timbalier Area, Block 63, Caisson I. | June 9 to 14, 2012. | Bottlenose dolphins (22); Unidentified dolphins (50). | None. |
| ERT ..... | South Timbalier Area, Block 63, Caisson J. | June 14 to 16, 2012. | None ..... | None. |
| ERT ..... | Ship Shoal Area, Block 223, Platform F. | August 15 to 20, 2012. | Bottlenose dolphins (23) ..... | None. |
| ERT ..... | South Timbalier Area, Block 63, Caisson 21. | August 21 to 22, 2012. | None ..... | None. |

Pursuant to these regulations, NMFS has issued LOAs to ERT and Demex. Issuance of the LOAs is based on a finding made in the preamble to the final rule that the total taking over the five-year period (with monitoring, mitigation, and reporting measures) will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS will review reports to ensure that the applicants are in compliance with meeting the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: February 26, 2013.

**Helen M. Golde,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2013–04791 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XC530**

## North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public committee meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee (SSLMC) will meet in Anchorage, AK.

**DATES:** The meeting will be held on March 21–22, 2013, from 8 a.m. to 5 p.m., each day.

**ADDRESSES:** The meeting will be held in the North Pacific Research Board conference room, 100 W. 3rd Avenue, #1007, Anchorage, AK.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Steve MacLean, NPFMC; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review and discuss the draft Steller Sea Lion Mitigation Measures Environmental Impact Statement, and to develop comments for the Council. Additional information is posted on the Council Web site: *http://www.alaskafisheries.noaa.gov/npfmc/*. The meeting will be webcast at *http://npfmc.webex.com* to allow the public to watch and hear presentations. Comments will not be accepted via Webcast or teleconference.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: February 26, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–04809 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XC523**

## Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee (SSC) will hold a public meeting.

**DATES:** The meeting will be held on Wednesday, March 20, 2013 from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and the telephone-only connection details are available at: *http://www.mafmc.org.*

*Council address:* Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331, extension 255.

**SUPPLEMENTARY INFORMATION:** Agenda items to be discussed include: (1) Review of Tilefish Industry AP Performance Report, (2) review information relevant to 2013–2014 Tilefish ABC recommendations, (3) SUN Subcommittee update on signpost development for multi-year ABC specifications, (4) MAFMC research priorities, and (5) SSC species lead assignments for 2013.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: February 26, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–04775 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XC524**

## North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Ecosystem Committee will meet by teleconference in Anchorage, AK.

**DATES:** The teleconference will be held on March 19, 2013 from 1 p.m. to 4 p.m. (Alaska Standard Time).

**ADDRESSES:** Listening sites will be held at the Council Office, 605 W 4th Avenue, Room 205, Anchorage, AK.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Diana Evans, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The agenda will be as follows: (1) Discussion on the Essential Fish Habitat (EFH) consultation regarding gold dredging in crab habitat in Nome; (2) Report on NOAA progress with implementing Ecosystem Based Management (EBM) science throughout the regions; and (3) Begin work on developing a roadmap for the Council for EBM.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: February 26, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–04778 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–0526**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) will hold a two-day workshop to discuss issues that relate to establishing a risk policy for Council-managed species.

**DATES:** The workshop will take place on Wednesday and Thursday, March 20–21, 2013, starting at 8:30 a.m. on each day.

**ADDRESSES:** The meeting will be held at the Hawthorne Hotel, 18 Washington Square W, Salem, MA 01970; telephone: (978) 744–4080 or (800) 729–7829; or email: *info@hawthornehotel.com.*

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Wednesday, March 20, 2013 and Thursday, March 21, 2013**

The New England Fishery Management Council is holding a workshop to advance the development of a comprehensive acceptable biological catch (ABC) risk policy for New England fisheries through structured and participatory discussions. It is an important early step in what will be a multi-step process to develop the policy. The agenda will include speakers outside of the Council and its SSC who have experience with approaches that address risk and could be applied to fisheries management. It will provide Council members and others with a common understanding of the concepts needed to develop a risk policy. It also will provide an opportunity for communications between participants about management and science issues that relate to the ABC setting process.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

*Special Accommodations*

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 26, 2013.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2013–04779 Filed 2–28–13; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to and Deletions From the Procurement List.

**SUMMARY:** The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

*Comments Must Be Received On or Before:* 4/1/2013.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

**FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT:** Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

**Additions**

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Products*

Portable Desktop Clipboard, 9½″ W x 1½″ D x 13½″ H

*NSN:* 7510–00–NIB–2133—Black
*NSN:* 7510–00–NIB–9835—Blue
*NSN:* 7510–00–NIB–9836—Army Green
*NPA:* L.C. Industries for the Blind, Inc., Durham, NC
*Contracting Activity:* General Services Administration, New York, NY
*Coverage:* A-List for the Total Government Requirement as aggregated by the General Services Administration.

*NSN:* MR 318—Set, Mixing Bowl, Spill-Free, 3PC
*NPA:* Industries for the Blind, Inc., West Allis, WI
*Contracting Activity:* Defense Commissary Agency, Fort Lee, VA
*Coverage:* C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Shirt, Sleeping

*NSN:* 8415–00–890–2099
*NSN:* 8415–00–890–2100
*NSN:* 8415–00–890–2101
*NSN:* 8415–00–890–2102
*NSN:* 8415–00–890–2103
*NSN:* 8415–00–935–6855
*NPA:* Mount Rogers Community Services Board, Wytheville, VA
*Contracting Activity:* Defense Logistics Agency Troop Support, Philadelphia, PA
*Coverage:* C-List for 100% of the requirement of the U.S. Army, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

*Service*

*Service Type/Location:* Full Food Service, Naval Special Warfare Development Group, Virginia Beach, VA.
*NPA:* Goodwill Industries of Lower South Carolina, Inc., North Charleston, SC
*Contracting Activity:* U.S. Special Operations Command (USSOCOM), Naval SPEC Warfare Development GRP, Virginia Beach, VA

**Deletions**

The following products are proposed for deletion from the Procurement List:

*Products*

Handle, Mop

*NSN:* 7920–00–246–0930
*NPA:* Industries of the Blind, Inc., Greensboro, NC
*Contracting Activity:* General Services Administration, Fort Worth, TX

Sponge, Surgical, Gauze, Compressed

*NSN:* 6510–00–926–9082

*NPA:* Elwyn, Inc., Aston, PA
*Contracting Activity:* Defense Logistics Agency Troop Support, Philadelphia, PA

**Barry S. Lineback,**

*Director, Business Operations.*

[FR Doc. 2013–04769 Filed 2–28–13; 8:45 am]

**BILLING CODE 6353–01–P**

## DEPARTMENT OF ENERGY

**[FE Docket Nos. 12–105–NG; 12–106–NG; 12–107–NG; 12–108–NG ; 12–109–NG; 12–123–LNG; 12–128–NG; 12–148–NG; 12–158–NG]**

## Puget Sound Energy, Inc.; Puget Sound Energy, Inc.; Puget Sound Energy, Inc.; Puget Sound Energy, Inc.; CE FLNG, LLC; Consolidated Edison Company of New York, Inc. and Orange Rockland Utilities, Inc.; TAQA North; CIMA Energy Ltd.; Orders Granting Authority To Import and Export Natural Gas, To Export Liquefied Natural Gas and Vacating Prior Authority During November 2012

**AGENCY:** Office of Fossil Energy, Department of Energy (DOE).

**ACTION:** Notice of orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during November 2012, it issued orders granting authority to import and export natural gas and liquefied natural gas and vacating prior authority. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2012.html.* They are also available for inspection and copying in the Office of Fossil Energy, Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on February 14, 2013.

**John A. Anderson,**

*Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.*

**Appendix**

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

| Order No. | Date issued | FE Docket No. | Authorization holder | Description of action |
|---|---|---|---|---|
| 3185 | 11/13/12 | 12–105–NG | Puget Sound Energy, Inc | Order granting long-term authority to import/export natural gas from/to Canada. |
| 3186 | 11/13/12 | 12–106–NG | Puget Sound Energy, Inc | Order granting long-term authority to import/export natural gas from/to Canada. |
| 3187 | 11/13/12 | 12–107–NG | Puget Sound Energy, Inc | Order granting long-term authority to import/export natural gas from/to Canada. |
| 3188 | 11/13/12 | 12–108–NG | Puget Sound Energy, Inc | Order granting long-term authority to import/export natural gas from/to Canada. |
| 3189 | 11/13/12 | 12–109–NG | Puget Sound Energy, Inc | Order granting long-term authority to import/export natural gas from/to Canada. |
| 3190 | 11/13/12 | 12–128–NG | Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. | Order granting blanket authority to import/export natural gas from/to Canada, and vacating prior authority in DOE/FE Order No. 2894. |
| 3191 | 11/13/12 | 12–148–NG | TAQA North | Order granting blanket authority to import natural gas from Canada. |
| 3192 | 11/15/12 | 12–158–NG | CIMA Energy, Ltd | Order granting blanket authority to import/export natural gas from/to Canada/Mexico. |
| 3193 | 11/21/12 | 12–123–LNG | CE FLNG, LLC | Order granting long-term multi-contract authority to export LNG by vessel from the proposed CE FLNG Terminal in Plaquemines Parish, Louisiana, to Free Trade Agreement nations. |

[FR Doc. 2013–04773 Filed 2–28–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Public Availability of Department of Energy FY 2012 Service Contract Inventory

**AGENCY:** Department of Energy.

**ACTION:** Notice of Public Availability of FY 2012 Service Contract Inventories.

**SUMMARY:** In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of Energy (DOE) is publishing this notice to advise the public on the availability of the FY 2012 Service Contract inventory. This inventory provides information on service contract actions over $25,000 that DOE completed in FY 2012. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* On December 19, 2011, OFPP issued additional guidance available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.*

Except for minor changes to reporting deadlines, the guidance for preparing and analyzing FY 2012 inventories is essentially unchanged from OFPP's November 5, 2010, guidance for preparing the FY 2010 inventory. DOE has posted its inventory and a summary of the inventory at: *http://energy.gov/management/downloads/service-contract-inventory.*

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the service contract inventory should be directed to Jeff Davis in the Strategic Programs Division at 202–287–1877 or *jeff.davis@hq.doe.gov.*

Dated: February 6, 2013.

**Paul Bosco,**

*Director, Office of Acquisition and Project Management.*

[FR Doc. 2013–04771 Filed 2–28–13; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. DI13–3–000]**

### Roberto Sella; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI13–3–000.

c. *Date Filed:* February 7, 2012.

d. *Applicant:* Roberto Sella.

e. *Name of Project:* Hydro-electric and Geothermal Alternative Energy System at Paper Hill Farm (Paper Hill Farm).

f. *Location:* The proposed Paper Hill Farm project will be located on Ridley Creek, at Paper Hill Farm, in the town of Malvern, Chester County, Pennsylvania.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Roberto Sella, 2929 Market Street, Cira Center 3rd Floor Suite 325, Philadelphia, PA 19104; telephone: (267) 298–5484; email: *Roberto.sella@llfunds.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Ashish Desai, (202) 502–8370, or Email address: *Ashish.Desai@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions is:* 30 days from the issuance of this notice by the Commission.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI13–3–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Paper Hill Farm project will consist of: (1) Water transported from a creek into a 1.9 acre pond dredged to an even depth of 6-feet; (2) a 36-inch-diameter pipe fitted with a 24-inch-diameter sleeve at an existing outlet at the base of existing dam; (3) a custom 15-kilowatt turbine/generator, to be located in a powerhouse below the dam; (4) a 24-inch-diameter tailrace pipe, directing the water into Ridley Creek; and (5) appurtenant facilities. The power generated will be used by a geothermal heating and cooling system located under the pond. Excess power will then be made available to the main house and other structures on Paper Hill Farm at a connection to the Philadelphia Electric Company's power grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the Docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov;* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: February 25, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–04758 Filed 2–28–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–4628–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits third informational compliance filing apprising Commission of progress in developing tariff changes allowing loads to provide both price responsive demand and supply-side demand response.
*Filed Date:* 2/14/13.
*Accession Number:* 20130214–5165.
*Comments Due:* 5 p.m. ET 3/7/13.

*Docket Numbers:* ER13–356–002.
*Applicants:* ISO New England Inc.
*Description:* Gas Pipeline Info. Sharing Compliance Filing to be effective 1/24/2013.
*Filed Date:* 2/22/13.
*Accession Number:* 20130222–5050.
*Comments Due:* 5 p.m. ET 3/15/13.

*Docket Numbers:* ER13–966–000.
*Applicants:* Citadel Energy Strategies LLC.
*Description:* Cancellation of market-based rates tariff. to be effective 2/22/2013.
*Filed Date:* 2/21/13.
*Accession Number:* 20130221–5095.
*Comments Due:* 5 p.m. ET 3/14/13.

*Docket Numbers:* ER13–967–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* 2013–02–21 Local Market Power Mitigation 2 to be effective 5/1/2013.
*Filed Date:* 2/21/13.
*Accession Number:* 20130221–5117.
*Comments Due:* 5 p.m. ET 3/14/13.

*Docket Numbers:* ER13–968–000.
*Applicants:* Northern Indiana Public Service Company.
*Description:* Filing of an Amendment to Transmission Upgrade Agreement to be effective 2/25/2013.
*Filed Date:* 2/22/13.
*Accession Number:* 20130222–5028.
*Comments Due:* 5 p.m. ET 3/15/13.

*Docket Numbers:* ER13–969–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Queue Position W3–048, Original Service Agreement No. 3509 to be effective 1/23/2013.
*Filed Date:* 2/22/13.
*Accession Number:* 20130222–5041.
*Comments Due:* 5 p.m. ET 3/15/13.

*Docket Numbers:* ER13–970–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* 02–22–2013 SA 2514 GRE–MP Little Falls T–T IA to be effective 2/23/2013.
*Filed Date:* 2/22/13.
*Accession Number:* 20130222–5048.
*Comments Due:* 5 p.m. ET 3/15/13.

*Docket Numbers:* ER13–971–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* 02–22–2013 SA 2513 GRE–MP Southdale-Scearcyville T–T IA to be effective 2/23/2013.
*Filed Date:* 2/22/13.
*Accession Number:* 20130222–5057.
*Comments Due:* 5 p.m. ET 3/15/13.

*Docket Numbers:* ER13–972–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.15: Cancellation of U3–013 Interim ISA ? Original SA No. 3240 to be effective 1/23/2013.
*Filed Date:* 2/22/13.
*Accession Number:* 20130222–5070.
*Comments Due:* 5 p.m. ET 3/15/13.

Take notice that the Commission received the following open access transmission tariff filings:

*Docket Numbers:* OA13–2–000.
*Applicants:* Idaho Power Company.
*Description:* Idaho Power Company submits Annual Compliance Report on Operational Penalty Assessments and Distributions.
*Filed Date:* 2/22/13.
*Accession Number:* 20130222–5080.
*Comments Due:* 5 p.m. ET 3/15/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 22, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–04744 Filed 2–28–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2074–003, ER10–2097–005.
*Applicants:* Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company.
*Description:* Amendment to September 21, 2012 Notice of Change in Status of Kansas City Power & Light Company, *et al.*
*Filed Date:* 2/4/13.
*Accession Number:* 20130204–5161.
*Comments Due:* 5 p.m. ET 3/14/13.

*Docket Numbers:* ER10–2074–003, ER10–2097–005.
*Applicants:* Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company.
*Description:* Kansas City Power & Light Company, *et al.* submits Amendment to February 4, 2013 Amendment to September 21, 2012 Notice of Change in Status of Kansas City Power & Light Company, *et al.*
*Filed Date:* 2/5/13.
*Accession Number:* 20130205–5103.
*Comments Due:* 5 p.m. ET 3/14/13.

*Docket Numbers:* ER13–879–000.
*Applicants:* Josco Energy Corp.
*Description:* Josco Energy Corp. submits supplement to February 4, 2013 Application for Market Based Authority.
*Filed Date:* 2/20/13.
*Accession Number:* 20130220–5113.
*Comments Due:* 5 p.m. ET 3/6/13.

*Docket Numbers:* ER13–962–000.
*Applicants:* Wisconsin Power and Light Company.
*Description:* WPL's Changes in Depreciation Rates for Wholesale Production Service to be effective 1/1/2013.
*Filed Date:* 2/21/13.
*Accession Number:* 20130221–5035.
*Comments Due:* 5 p.m. ET 3/14/13.

*Docket Numbers:* ER13–963–000.
*Applicants:* ECP Energy I, LLC.
*Description:* Normal filing to be effective 4/22/2013.
*Filed Date:* 2/21/13.
*Accession Number:* 20130221–5036.
*Comments Due:* 5 p.m. ET 3/14/13.

*Docket Numbers:* ER13–964–000.
*Applicants:* EquiPower Resources Management, LLC.
*Description:* Normal filing to be effective 4/22/2013.
*Filed Date:* 2/21/13.
*Accession Number:* 20130221–5037.

*Comments Due:* 5 p.m. ET 3/14/13.

*Docket Numbers:* ER13–965–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 3488; Queue No. Y1–012 to be effective 1/23/2013.

*Filed Date:* 2/21/13.

*Accession Number:* 20130221–5052.

*Comments Due:* 5 p.m. ET 3/14/13.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF12–267–000.

*Applicants:* Holyoke Solar, LLC.

*Description:* Holyoke Solar, LLC submit Refund Report.

*Filed Date:* 2/20/13.

*Accession Number:* 20130220–5172.

*Comments Due:* 5 p.m. ET 3/13/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 21, 2013.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2013–04745 Filed 2–28–13; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–973–000]**

### Saja Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Saja Energy LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is March 18, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 25, 2013.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2013–04757 Filed 2–28–13; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OW–2006–0408; FRL–9786–7]**

### Proposed Information Collection Request; Comment Request; EPA's WaterSense Program (Renewal); EPA ICR No. 2233.06

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency is planning to submit a request to renew an existing information collection request (ICR), ''EPA's WaterSense Program (Renewal)'' (EPA ICR No. 2233.06, OMB Control No. 2040–0272), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through June 30, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before April 30, 2013.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OW–2006–0408, online using *www.regulations.gov* (our preferred method), or by email to *OW-Docket@epa.gov*, or by mail to: U.S. Environmental Protection Agency, EPA Docket Center, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:** Alicia Marrs, WaterSense Branch, Municipal Support Division, Office of Wastewater Management, Office of Water, U.S. Environmental Protection Agency, Mail Code 4204M, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 303–312–6269; fax number: 1–877–876–9101; email address: *marrs.alicia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Supporting documents which explain in detail the information that the EPA will

be collecting are available in the public docket for this ICR (Docket ID No. EPA–HQ–OW–2006–0408). The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

*Abstract:* WaterSense is a voluntary program designed to create self-sustaining markets for water-efficient products and services via a common label. The program provides incentives for manufacturers and builders to design, produce, and market water-efficient products and homes. In addition, the program provides incentives for certified professionals (e.g. certified irrigation auditors, designers, or installation and maintenance professionals) to deliver water-efficient services. The program also encourages consumers and commercial and institutional purchasers of water-using products and systems to choose water-efficient products and use water-efficient practices.

As part of strategic planning efforts, EPA encourages programs to develop meaningful performance measures, set ambitious targets, and link budget expenditures to results. Data collected under this ICR will assist WaterSense in demonstrating results and carrying out evaluation efforts to ensure continual program improvement. In addition, the data will help EPA estimate water and energy savings and inform future product categories and specifications.

*Form Numbers:*

*Forms not yet finalized in *italics.*

Partnership Agreement

- Irrigation partners 6100–07
- Promotional partners 6100–06
- Retailers/distributors 6100–12
- Manufacturers 6100–13
- Professional Certifying Organizations 6100–07
- Builders 6100–19
- Licensed Certification Providers 6100–20
- Licensed Certifying Body 6100–13

Annual Reporting Form

- Promotional partners 6100–09
- Manufacturers (separate forms for plumbing and non-plumbing product manufacturers) 6100–09
- Retailers/Distributors 6100–09
- Builders 6100–09
- *Professional Certifying Organizations 6100–X1*

Provider Quarterly Reporting Form

- Licensed Certification Providers 6100–09

Award Application Form

- Irrigation Partners 6100–17
- Promotional Partners 6100–17
- Manufacturers 6100–17
- Retailers/Distributors 6100–17
- Builders 6100–17
- Licensed Certification Providers 6100–17
- Professional Certifying Organizations 6100–17

Consumer Awareness Survey

- *Survey form 6100–X2*

*Respondents/affected entities:* Respondents will consist of WaterSense partners and participants in the consumer survey. WaterSense partners include product manufacturers; professional certifying organizations; retailers; distributors; utilities; federal, state, and local governments; home builders; irrigation professionals; licensed certification providers; and NGOs.

*Respondent's obligation to respond:* Voluntary.

*Estimated number of respondents:* EPA estimates the total number of respondents (over 3 years) to be 3,261.

*Frequency of response:* Once a prospective partner organization reviews WaterSense materials and decides to join the program, it will submit the appropriate Partnership Agreement for its partnership category (this form is only submitted once). Each year, EPA also asks partners to submit an Annual Reporting Form and Awards Application (voluntarily at the partner's discretion). Licensed certification providers for WaterSense-labeled new homes are asked to submit a Provider Quarterly Reporting Form four times each year. EPA also will conduct a Consumer Awareness Survey once over the three-year period of the ICR.

*Total estimated burden:* 8,926 hours (per year for both respondents and EPA). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $699,872 (per year for both respondents and EPA), includes $3,290 annualized capital or operation & maintenance costs.

*Changes in Estimates:* There is a decrease of 51,420 hours in the estimated burden on respondents (over three years) compared with the ICR currently approved by OMB. There is a decrease of 144,966 hours in the total estimated burden (for respondents and EPA, over three years) compared with the ICR currently approved by OMB. The WaterSense program has been modified and expanded significantly since the current ICR was approved in 2010; however, the program has made efforts over the last several years to reduce the burden for its partners and the Agency. Program changes, including using online forms, eliminating product notification forms for manufacturers, and deciding not to require irrigation partners to report annually have led to significantly reduced operation & maintenance costs and a lower estimated burden. Finally, EPA has a better understanding of how long it takes partners to complete program forms and better historical data to project new partners and forms over the next three years.

Dated: February 22, 2013.

**Randolph L. Hill,**

*Acting Director, Office of Wastewater Management.*

[FR Doc. 2013–04817 Filed 2–28–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–9007–9]**

## Environmental Impacts Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 02/19/2013 Through 02/22/2013 Pursuant to 40 CFR 1506.9.

**Notice**

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

*EIS No. 20130043, Final EIS, USAF, CA,* F–15 Aircraft Conversion, 144th Fighter Wing, California Air National Guard, Fresno-Yosemite International Airport, Review Period Ends: 04/01/2013, Contact: Robert Dogan 240–612–8859.

*EIS No. 20130044, Draft EIS, FHWA, NV,* Pyramid Way and McCarran Boulevard Intersection Improvement Project, Comment Period Ends: 04/15/2013, Contact: Abdelmoez Abdalla 775–687–1231.

*EIS No. 20130045, Draft EIS, USACE,* 00, Update of the Water Control Manual for the Alabama-Coosa-Tallapoosa River Basin in Georgia and Alabama, Comment Period Ends: 05/01/2013, Contact: Lewis Sumner 251–694–3857.

*EIS No. 20130046, Final EIS, FERC, CA,* Middle Fork American River Project, Review Period Ends: 04/01/2013, Contact: Matt Buhyoff 202–502–6824.

*EIS No. 20130047, Draft EIS, NPS, FL,* Everglades National Park Draft General Management Plan/East Everglades Wilderness Study, Comment Period Ends: 04/15/2013, Contact: Eric Thuerk 303–987–6852.

*EIS No. 20130048, Draft EIS, BOEM, 00,* Gulf of Mexico OCS Oil and Gas Lease Sales: 2014 and 2016 Eastern Planning Area Lease Sales 225 and 226, Comment Period Ends: 04/15/2013, Contact: Gary D. Goeke (504) 736–3233.

**Amended Notices**

*EIS No. 20120392, Draft EIS, USACE, 00*, Lower Snake River Programmatic Sediment Management Plan, Washington and Idaho, Comment Period Ends: 03/26/2013, Contact: Sandra Shelin 509–527–7265.

Revision to FR Notice Published 12/21/2012; Extending Comment Period to 03/26/2013.

Dated: February 26, 2013.

**Cliff Rader,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2013–04797 Filed 2–28–13; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9786–5; Docket ID No. EPA–HQ–ORD–2012–0879]**

## Watershed Modeling To Assess the Sensitivity of Streamflow, Nutrient, and Sediment Loads to Climate Change and Urban Development in 20 U.S. Watersheds

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Public Comment Period and Letter Peer-Review.

**SUMMARY:** EPA is announcing a 45-day public comment period for the draft document titled *Watershed Modeling to Assess the Sensitivity of Streamflow, Nutrient, and Sediment Loads to Climate Change and Urban Development in 20 U.S. Watersheds* (EPA/600/R–12/058). EPA also is announcing that an EPA contractor for external scientific peer review will select an independent group of experts to conduct a letter peer review of the draft document. The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development and is intended to characterize the sensitivity of streamflow, nutrient (nitrogen and phosphorus), and sediment loading to a range of plausible mid-21st century climate change and urban development scenarios. The study also provides an improved understanding of methodological challenges associated with integrating existing tools and datasets to assess the potential effects of climate change and urban development on stream flow and water quality.

EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer reviewers for their consideration during the letter review. When finalizing the draft document, EPA intends to consider any public comments received in accordance with this notice. EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines and it does not represent and should not be construed to represent Agency policy or views. The draft document is available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.*

**DATES:** The 45-day public comment period begins March 1, 2013 and ends April 15, 2013. Technical comments should be in writing and must be received by EPA by April 15, 2013.

**ADDRESSES:** The draft document, *Watershed Modeling to Assess the Sensitivity of Streamflow, Nutrient, and Sediment Loads to Climate Change and Urban Development in 20 U.S. Watersheds,* is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and the Data and Publications menus at *www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title.

Comments may be submitted electronically via *www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or email: *ORD.Docket@epa.gov*.

For technical information, contact Thomas Johnson, NCEA; telephone: 703–347–8618; facsimile: 703–347–8694; or email: *johnson.thomas@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Information About the Project/Document

There is growing concern about the potential effects of climate change on water resources. Watershed modeling was conducted in 20 large, U.S. watersheds to characterize the sensitivity of streamflow, nutrient (nitrogen and phosphorus) loading, and sediment loading to a range of plausible mid-21st century climate change and urban development scenarios. The study also provides an improved understanding of methodological challenges associated with integrating existing tools (e.g., climate models, downscaling approaches, and watershed models) and datasets to assess the potential effects of climate change and urban development on stream flow and water quality. Study sites were selected to represent a range of geographic, hydrologic, and climatic characteristics throughout the nation. Watershed simulations were conducted using the Soil Water Assessment Tool (SWAT) and Hydrologic Simulation Program—FORTRAN (HSPF) models.

Simulation results illustrate a high degree of variability in the response of different streamflow and water quality attributes to climate change throughout the nation. Results also illustrate sensitivity to methodological choices such as different approaches for downscaling global climate change simulations and use of different watershed models. This understanding may lead to improvements in how existing models and datasets can be used to assess climate change impacts on watersheds.

This report presents a summary of simulation results. The report is technical in nature but results are of broad interest to water and watershed managers, urban or regional planners, government officials, and scientists and engineers interested in the potential implications of climate change on streamflow and water quality in different regions of the nation.

**II. How To Submit Technical Comments to the Docket at www.regulations.gov**

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2012–0879, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments;
- Email: *ORD.Docket@epa.gov;*
- Fax: 202–566–1753;
- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460. The phone number is 202–566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies; or
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center's Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2012–0879. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

*Docket:* Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: December 3, 2012.

**Debra B. Walsh,**

*Acting Deputy Director, National Center for Environmental Assessment.*

[FR Doc. 2013–04807 Filed 2–28–13; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK

**[Public Notice: 2013–0116]**

### Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP087549XX

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Notice.

**SUMMARY:** This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

*Reference:* AP087549XX.

**Purpose and Use**

*Brief Description of the Purpose of the Transaction*

To support the export of U.S. manufactured helicopters to Brazil, Norway, the United Kingdom, and/or other countries acceptable to Ex-Im Bank.

Brief non-proprietary description of the anticipated use of the items being exported:

To be sub-leased to be used to transport passengers and equipment to oil platforms off the coast of Brazil, Norway, the United Kingdom, and/or other countries acceptable to Ex-Im Bank.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

**Parties**

*Principal Supplier:* Sikorsky Aircraft Corporation.

*Obligor:* The Milestone Aviation Group Limited.

*Guarantor(s):* N/A.

**Description of Items Being Exported**

Sikorsky S–92 helicopters.

*Information on Decision:* Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/newsandevents/boardmeetings/board/*.

*Confidential Information:* Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

**DATES:** Comments must be received on or before March 26, 2013 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

**ADDRESSES:** Comments may be submitted through Regulations.gov at *www.regulations.gov*. To submit a comment, enter EIB–2013–0016 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0016 on any attached document.

**Sharon A. Whitt,**

*Records Clearance Officer.*

[FR Doc. 2013–04776 Filed 2–28–13; 8:45 am]

**BILLING CODE 6690–01–P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Content Policy

This notice is to inform the public that the Export-Import Bank of the United States is in the process of reviewing its content policy. A list of the questions and issues that the Bank is addressing can be accessed here: *http://www.exim.gov/generalbankpolicies/content/2013-Content-Review.cfm*.

The Bank is soliciting public comment on these questions and issues. Interested parties may submit comments on this document by email to *content.review@exim.gov* or by mail to 811 Vermont Avenue NW., Room 451, Washington, DC 20571, within 21 calendar days of the date this notice appears in the **Federal Register**.

**Angela Mariana Freyre,**

*Senior Vice President and General Counsel.*

[FR Doc. 2013–04879 Filed 2–27–13; 4:15 pm]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written comments should be submitted on or before April 1, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0010.

*Title:* Ownership Report for Commercial Broadcast Stations, FCC Form 323.

*Form Number:* FCC Form 323.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit entities; not-for-profit institutions; State, Local or Tribal Governments.

*Number of Respondents/Responses:* 9,250 respondents; 9,250 responses.

*Estimated Time per Response:* 2.5 hours to 4.5 hours.

*Frequency of Response:* Recordkeeping requirement; on occasion reporting requirement; biennially reporting requirement.

*Total Annual Burden:* 38,125 hours.

*Total Annual Costs:* $26,940,000.

*Nature of Response:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303, 310 and 533 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* Form 323 collects two types of information from respondents: personal information in the form of names, addresses, job titles and demographic information; and FCC Registration Numbers (FRNs).

The system of records notice (SORN), FCC/MB–1, ''Ownership Report for Commercial Broadcast Stations,'' which was approved on December 21, 2009 (74 FR 59978) covers the collection,

purposes(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323. FCC Form 323 is drafting a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

FRNs are assigned to applicants who complete FCC Form 160 (OMB Control No. 3060–0917). Form 160 requires applicants for FRNs to provide their Taxpayer Information Number (TIN) and/or Social Security Number (SSN). The FCC's electronic CORES Registration System then provides each registrant with a FCC Registration Number (FRN), which identifies the registrant in his/her subsequent dealings with the FCC. This is done to protect the individual's privacy. The Commission maintains a SORN, FCC/OMD–9, ''Commission Registration System (CORES)'' to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 160. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

*Privacy Act Impact Assessment:* The Commission is drafting a Privacy Impact Assessment for the PII that is covered by FCC/MB–1 SORN. Upon completion of the PIA, it will be posted on the FCC Web page, as required by the Office of Management and Budget (OMB) Memorandum, M–03–22 (September 22, 2003).

*Needs and Uses:* Licensees of commercial AM, FM, and full power television broadcast stations, as well as licensees of Class A and Low Power Television stations must file FCC Form 323 every two years. Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Thereafter, the Form shall be filed biennially beginning November 1, 2011, and every two years thereafter.

Also, Licensees and Permittees of commercial AM, FM, or full power television stations must file Form 323 following the consummation of a transfer of control or an assignment of a commercial AM, FM, or full power television station license or construction permit; a Permittee of a new commercial AM, FM or full power television broadcast station must file Form 323 within 30 days after the grant of the construction permit; and a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate FCC Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee if the filing is a nonbiennial filing or a reportable interest in the Licensee if the filing is a biennial filing.

**Updated Information Collection**

With this submission the Commission is complying with The Office of Management and Budget's (OMB's) request to update this collection to be consistent with current Federal standards for the collection of racial and ethnicity data (*see* Notice of Office of Management and Budget Action (NOA), dated 09/13/2012).

The FCC Form 323 (page 7) and Instructions (page 9) have been changed to remove the ''Two or more races'' option under the Gender/Ethnicity/Race Information. Previously, the question required filers to select one and only one of the following options: American Indian or Alaska Native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; White; or Two or more races. As revised, filers are able to select more than one race category, if applicable.

We are requesting the three year extension of this information collection.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2013–04700 Filed 2–28–13; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** *Thursday, March 7, 2013 at 10:00 a.m.*

**PLACE:** 999 E Street NW., Washington, DC (Ninth Floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of the Minutes for the Meeting of February 14, 2013.

Petition for Rulemaking filed by the Center for Individual Freedom.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shelley E. Garr,**

*Deputy Secretary of the Commission.*

[FR Doc. 2013–04808 Filed 2–27–13; 11:15 am]

**BILLING CODE 6715–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 18, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Al C. Flack, Jr., individually, and Al C. Flack, Jr., David A. Flack, and Allyson P. Flack,* all of Wichita Falls, Texas, collectively a group acting in concert; to acquire control shares of Wichita Falls Bancshares, Inc., and thereby indirectly acquire voting shares of First National Bank, both in Wichita Falls, Texas.

Board of Governors of the Federal Reserve System, February 26, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–04786 Filed 2–28–13; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 28, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Eagle Bancshares, Inc.,* Eagle, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Eagle State Bank, Eagle, Nebraska.

Board of Governors of the Federal Reserve System, February 25, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–04765 Filed 2–28–13; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 2013.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *BancFirst Corporation,* Oklahoma City, Oklahoma; to acquire control of Spirit Bankcorp, Inc., Bristow, Oklahoma, and thereby indirectly acquire voting shares of SpiritBank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, February 25, 2013.

**Margaret McCloskey Shanks,**

*Deputy Secretary of the Board.*

[FR Doc. 2013–04766 Filed 2–28–13; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers CMS–588 and CMS–10169]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Electronic Funds Transfers Authorization Agreement *Use:* The primary function of the Electronic Funds Transfer Authorization Agreement (CMS 588) is to gather information from a provider/supplier to establish an electronic payment process.

The legal authority to collect this information is found in Section 1815(a) of the Social Security Act. This section provides authority for the Secretary of Health and Human Services to pay providers/suppliers of Medicare services. Under 31 U.S.C. 3332(f)(1), all federal payments, including Medicare payments to providers and suppliers, shall be made by electronic funds transfer. 31 U.S.C. 7701 (c) requires that any person or entity doing business with the federal government must provide their Tax Identification Number (TIN).

The goal of this submission is to renew the data collection. Only two minor revisions for systems requirements will be made at this time, specifically adding a street address line for the location of the financial institution and adding an additional National Provider Identification (NPI) number collection field for those providers/suppliers who have more than one NPI. *Form Number:* CMS–588 (OCN: 0938–0626). *Frequency:* Occasionally. *Affected Public:* Private Sector (business or other for-profits) and Not-for-profit institutions. *Number of Respondents:* 94,000. *Total Annual Responses:* 94,000. *Total Annual Hours:* 23,500. (For policy questions regarding this collection contact Kim McPhillips at 410–786–5374. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding Program. *Use:* Since 1989, Medicare has been paying for durable medical equipment (DME) and supplies (other than customized items) using fee schedule amounts that are calculated for each item or category of DME identified by a Healthcare Common Procedure Coding System code. Payments are based on the average supplier charges on Medicare claims from 1986 and 1987 and are updated annually on a factor legislated by Congress. For many years, the Government Accountability Office and the Office of Inspector General of the U.S. Department of Health and Human Services have reported that these fees are often highly inflated and that Medicare has paid higher than market rates for several different types of DME. Due to reports of Medicare overpayment of DME and supplies, Congress required that CMS conduct a competitive bidding demonstration project for these items. Accordingly, CMS implemented a demonstration project for this program from 1999–2002 which produced significant savings for beneficiaries and taxpayers without hindering access to DMEPOS and related services. Shortly after a successful demonstration of the competitive bidding program, Congress passed the Medicare Prescription Drug, Improvement and Modernization Act of 2003 and mandated a phased-in approach to implement this program over the course of several years beginning in 2007 in 10 metropolitan statistical areas (MSAs). The statute specifically required the Secretary to establish and implement programs under which competitive bidding areas are established throughout the United States for contract award purposes for the furnishing of certain competitively priced items and services for which payment is made under Medicare Part B. This program is commonly known as the ''Medicare DMEPOS Competitive Bidding Program.''

CMS conducted its first round of bidding for the Medicare DMEPOS Competitive Bidding Program in 2007 with the help of its contractor, the Competitive Bidding Implementation Contractor. CMS published a Request for Bids instructions and accompanying forms for suppliers to submit their bids to participate in the program. During this first round of bidding, DMEPOS suppliers from across the U.S. submitted bids identifying the MSA(s) to service and the competitively bid item(s) they wished to furnish to Medicare beneficiaries. CMS evaluated these bids and contracted with those suppliers that met all program requirements. The first round of bidding was successfully implemented on July 1, 2008.

On July 15, 2008, however, Congress delayed this program in section 154 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). MIPPA mandated certain changes to the competitive bidding program which included, but are not limited to: A delay of Rounds 1 (competition began in 2009) and 2 of the program (competition began in 2011 in 70 specific MSAs); the exclusion of Puerto Rico and negative pressure wound therapy from Round 1 and group 3 complex rehabilitative power wheelchairs from all rounds of competition; a process for providing feedback to suppliers regarding missing financial documentation; and a requirement for contract suppliers to disclose to CMS information regarding subcontracting relationships. Section 154 of the MIPPA specified that the competition for national mail order items and services may be phased in after 2010 and established a rule requiring that a bidder demonstrate that its bid covers 50 percent (or higher) of the types of diabetic testing strips, based on volume (the ''50 percent rule'') for national mail order competitions. As required by MIPPA, CMS conducted the competition for the Round 1 Rebid in 2009. The Round 1 Rebid contracts and prices became effective on January 1, 2011.

The Affordable Care Act, enacted on March 23, 2010, expanded the Round 2 competition by adding an additional 21 MSAs, bringing the total MSAs for Round 2 to 91. The competition for Round 2 began in December 2011. CMS also began a competition for National Mail Order of Diabetic Testing Supplies at the same time as Round 2. The Round 2 and National Mail-Order contracts and prices have a target implementation date of July 1, 2013.

The MMA requires the Secretary to re-compete contracts not less often than once every 3 years. Most Round 1 Rebid contracts will expire on December 31, 2013. (Round 1 Rebid contracts for mail-order diabetic testing supplies ended on December 31, 2012.) Consequently, we are currently in the process of re-competing the competitive bidding contracts in the Round 1 Rebid areas.

The most recent approval for this information collection request (ICR) was issued by OMB on October 10, 2012. Since then, CMS has decided to sequentially update the paperwork burden necessary to administer the program as it expands nationally and cycles through multiple rounds of competition. Specifically, we are now seeking to update our burden estimates for certain contract maintenance forms for Round 2 and the national mail-order competitions. These include Form C and the Contract Supplier's Disclosure of Subcontractors form. We are also requesting approval of two additional forms: The Change of Ownership (CHOW) Purchaser Form and the CHOW Contract Supplier Notification Form, which will be utilized in all rounds of competition. Finally, we are retaining without change Forms A, B, and D and their associated burden under this ICR. We note that the information collection for Forms A and B is already complete. We intend to continue use of the Forms in future rounds of competition. *Form Number:* CMS–10169 (OCN: 0938–1016). *Frequency:* Occasionally. *Affected Public:* Private Sector (business or other for-profits) and Individuals or households. *Number of Respondents:* 19,035. *Total Annual Responses:* 19,035. *Total Annual Hours:* 9,311. (For policy questions regarding this collection contact Michael Keane at 410–786–4495. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by April 30, 2013:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 26, 2013.

**Martique Jones,**

*Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2013–04752 Filed 2–28–13; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the NIH Advisory Board for Clinical Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended to discuss personnel matters, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

*Name of Committee:* NIH Advisory Board for Clinical Research.

*Date:* March 18, 2013.

*Open:* 10:00 a.m. to 1:15 p.m.

*Agenda:* To review the FY14 Clinical Center Budget.

*Place:* National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

*Closed:* 1:15 p.m. to 2:00 p.m.

*Agenda:* To discuss personnel matters and/or issues of which the premature disclosure may affect outcomes.

*Place:* National Institutes of Health, Building 10, 10 Center Drive, CRC Medical Board Room 4–2551, Bethesda, MD 20892.

*Contact Person:* Maureen E Gormley, Executive Secretary, Mark O. Hatfield Clinical Research Center, National Institutes of Health, Building 10, Room 6–2551, Bethesda, MD 20892, (301) 496–2897.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: February 25, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–04740 Filed 2–28–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Heart, Lung, and Blood Initial Review Group, Heart, Lung, and Blood Program Project Review Committee.

*Date:* March 22, 2013.

*Time:* 8:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jeffrey H Hurst, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301–435–0303, *hurstj@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 25, 2013.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–04739 Filed 2–28–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Systems Biology and Networks Specials.

*Date:* March 12, 2013.

*Time:* 3:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Barbara J Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 25, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–04736 Filed 2–28–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: AIDS and Related Research.

*Date:* March 15, 2013.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Jose H Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Small Business: Basic and Integrative Bioengineering.

*Date:* March 25, 2013.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Washington National Airport, 1489 Jefferson Davis Hwy, Arlington, VA 22202.

*Contact Person:* Paul Sammak, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185, MSC 7892, Bethesda, MD 20892, 301–435–0601, *sammakpj@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Sensory and Motor Systems.

*Date:* March 25–26, 2013.

*Time:* 8:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 25, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–04735 Filed 2–28–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 12, 2013, 08:00 a.m. to March 13, 2013, 06:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on February 19, 2013, 78 FR 11659.

The meeting title was changed to ''Special: Clinical Studies in Nephrology and Urology''. The meeting date, time and location remain the same. The meeting is closed to the public.

Dated: February 25, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy*.

[FR Doc. 2013–04737 Filed 2–28–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee, March 13, 2013, 9:00 a.m. to March 13, 2013, 4:00 p.m., National Institutes of Health, Building 31, C-Wing, 6th Floor, 31 Center Drive, Conference Rooms 9 and 10, Bethesda, MD 20892 which was published in the **Federal Register** on January 3, 2013, 78 FR 312.

The meeting notice is amended to change the end time of the meeting on March 13, 2013 from 4:00 p.m. to 2:00 p.m. The meeting is open to the public.

Dated: February 25, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–04738 Filed 2–28–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Deputy Director for Intramural Research, National Institutes of Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Advisory Committee to the Deputy Director for Intramural Research, National Institutes of Health.

*Date:* March 25, 2013.

*Time:* 1:00–2:00 p.m. e.s.t.

*Agenda:* To discuss the report on the site visit review of the Office of NIH History program in the Office of Intramural Research.

*Place:* National Institutes of Health, Building 1, Room 151, 1 Center Drive, Bethesda, MD 20892, (Teleconference).

*Conference Call Access:* Conference line: 888–989–8138. Participant Passcode: 59004.

*Contact Person:* Margaret McBurney, Program Specialist, Office of the Deputy Director for Intramural Research, Office of the Director, NIH, 1 Center Drive, Room 151, Bethesda, MD 20892, *mmcburney@od.nih.gov,* Phone: (301) 496–1921, Fax: (301) 402–4273.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Office of Intramural Research home page: *http://sourcebook.od.nih.gov/* where an agenda and any additional information for the meeting will be posted when available.

Dated: February 25, 2013.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2013–04742 Filed 2–28–13; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

**Proposed Project: 2013 National Survey on Drug Use and Health (NSDUH) Dress Rehearsal (OMB No. 0930–0334)—Revision**

The National Survey on Drug Use and Health (NSDUH) is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

In order to continue producing current data, SAMHSA's Center for Behavioral Health Statistics and Quality (CBHSQ) must update the NSDUH periodically to reflect changing substance abuse and mental health issues. CBHSQ is in the process of redesigning the NSDUH for the 2015 survey year. The goals of the overall redesign are to: (1) Revise the questionnaire to address changing policy and research data needs, and (2) modify the survey methodology to improve the quality of estimates and the efficiency of data collection and processing. To achieve these goals, a Questionnaire Field Test (QFT) was conducted in late 2012 to test revisions to the questionnaire, study materials, and procedures. A Dress Rehearsal (DR) is planned for September and October 2013 to further refine and test changes implemented in the QFT as well as test all additional changes that have been identified for the 2015 redesign. These additional changes include an assessment of a new lightweight laptop used to administer the questionnaire, the addition of a Spanish language interview that was not included in the QFT to control costs, and additional select changes to the NSDUH questionnaire. The vast majority of differences in questionnaire content between the QFT and the proposed DR are minor. Changes include: (a) The addition of two sexual orientation questions to be asked of adults; (b) routine updates to routing and logic; (c) minimal changes to question wording throughout the instrument to clarify intent; and (d) the deletion of a question in the Back-end Demographics module about the number of employees who work at the respondent's business.

The DR will consist of 2,000 English and Spanish-speaking respondents in the continental United States. The sample size of the survey will be large enough to detect differences in key estimates between data collected using the annual NSDUH compared to the redesigned procedures. The total annual burden estimate is shown below:

ESTIMATED BURDEN FOR 2013 NSDUH DRESS REHEARSAL

| Instrument | Number of respondents | Responses per respondent | Hours per response | Total burden hours | Hourly wage rate | Annualized costs |
|---|---|---|---|---|---|---|
| Household Screening | 3,673 | 1 | 0.083 | 305 | $14.54 | $4,435 |
| Interview | 2,000 | 1 | 1.000 | 2,000 | 14.54 | 29,080 |
| Screening Verification | 100 | 1 | 0.067 | 6.7 | 14.54 | 97 |
| Interview Verification | 300 | 1 | 0.067 | 20 | 14.54 | 291 |
| Total | 3,673 | ..... | ..... | 2,332 | ..... | 33,903 |

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *OR* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received by April 30, 2013.

**Summer King,**

*Statistician.*

[FR Doc. 2013–04756 Filed 2–28–13; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting on of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Mental Health Services (CMHS), National Advisory Council meeting on April 10, 2013.

The meeting is open to the public and will be held at the SAMHSA building, 1 Choke Cherry Road, Rockville, MD 20857 in the Sugarloaf Conference Room. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions should be forwarded to the contact person on or before one week prior to the meeting. Oral presentations from the public will be scheduled at the conclusion of the meeting. Individuals interested in making oral presentations are encouraged to notify the contact on or before one week prior to the meeting. Five minutes will be allotted for each presentation.

Substantive program information may be obtained after the meeting by

accessing the SAMHSA Committee Web site, *http://nac.samhsa.gov/*, or by contacting Crystal C. Saunders, Acting Designated Federal Official.

*Committee Name:* Substance Abuse and Mental Health Services Administration CMHS, National Advisory Council.

*Date/Time/Type:* April 10, 2013, 9:00 a.m.–5:30 p.m. EST: (OPEN).

*Place:* SAMHSA Building, Sugarloaf Conference Room.

*Contact:* Crystal C. Saunders, Acting, Designated Federal Official, SAMHSA, CMHS, National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: 240–276–1117, Fax: 240–276–1395 and Email: *crystal.saunders@samhsa.hhs.gov.*

**Summer King,**

*Statistician, Substance Abuse and Mental Health, Services Administration.*

[FR Doc. 2013–04774 Filed 2–28–13; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5681–N–09]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Brenda Carignan, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 337, Washington, DC 20024, (202) 401–0787; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; *Health and Human Services:* Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave. NW., 4th Floor, Washington, DC 20006, (202) 254–5522; (These are not toll-free numbers).

Dated: February 21, 2013.

**Mark Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 03/01/2013**

**Suitable/Available Properties**

*Building*

California

W. Branch Station
18N31
Happy Camp CA 96039
Landholding Agency: Agriculture
Property Number: 15201310016
Status: Excess
Directions: Bldg. # 49240003
Comments: Off-site removal only; 99 sf.; pumphouse; 15 yrs. vacant; deteriorated

Florida

3 Buildings
Everglades Nat'l Park
Miami FL

Landholding Agency: Interior
Property Number: 61201310002
Status: Excess
Directions: 328A, 328B, 349
Comments: Off-site removal only; sf. varies; deteriorated conditions; movement of these bldgs. may result in complete disassembly; contact Interior for specific details of a property

Massachusetts

24 Buildings
USCG Air Station Cape Cod
Bourne MA 02542
Landholding Agency: Coast Guard
Property Number: 88201310002
Status: Excess
Directions: 5649, 5643, 5664, 5652, 5319, 5327, 5331, 5332, 5338, 5362, 5363, 5365, 5373, 5391, 5654, 5659, 5677, 5673, 5688, 5691, 5694, 5695, 5423, 5375
Comments: Off-site removal only; sf. varies; use varies; poor conditions; w/in restricted area; contact Coast Guard for info. on a specific property & accessibility/removal requirements

Nebraska

Former Omaha Qtrs. Depot
2101 Woolworth Ave.
Omaha NE 68108
Landholding Agency: GSA
Property Number: 54201310005
Status: Surplus
GSA Number: 7–D–NE–0530
Directions: Office #1: 14,520 sf.; office #2: 38,870 sf.; office #3: 11,000 sf.; office #4: 986 sf.; storage: 7,488 sf.; office #5: 12,250 sf.; office#6: 3,720 sf.; Two Gatehouses: 507 sf. each
Comments: 9 Bldgs. sits on 7.25 acres; Admin/Office; 12 mons. vacant; to access coordinate w/88th Army Reserve Command out of Ft. McCoy, WI

Oregon

Dale Residence (1052)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310001
Status: Excess
Comments: 894 sf.; residential; 84+ mons. vacant; repairs needed; asbestos; w/in controlled area; contact Ranger District for accessibility

Dale Duplex (1057) (1056)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310002
Status: Excess
Comments: 1,376 sf.; residential; repairs needed; w/in controlled area; contact Ranger District for accessibility

Dale Residence (1058)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310003
Status: Excess
Comments: 1,830 sf.; residential; 84+ mons. vacant; major repairs needed; asbestos

Dale Residence (1059)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310004
Status: Excess
Comments: 1,830 sf.; residential; 84+ mons. vacant; major repairs needed; asbestos; w/ in controlled area; contact Ranger District for accessibility

Dale Residence (1060)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310005
Status: Excess
Comments: 1,376 sf.; residential; 84+ mons. vacant; repairs needed; lead & asbestos; w/ in controlled area; contact Ranger District for accessibility

Dale Residence (1074)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310006
Status: Excess
Comments: 1,480 sf.; residential; 84+ mons. vacant; repairs needed; asbestos; w/in controlled area; contact Ranger District for accessibility

Dale Residence (1075)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310007
Status: Excess
Comments: 1,480 sf.; residential 84 mons. vacant; repairs needed; asbestos; w/in controlled area; contact Ranger District for accessibility

Dale Residence (1076)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310008
Status: Excess
Comments: 1,480 sf.; residential; 84+ mons. vacant; repairs needed; w/in controlled area; contact Ranger District for accessibility

Dale Residence (1082)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310009
Status: Excess
Comments: 1,480 sf.; residential; 84+ mons. vacant; major repairs needed; asbestos; w/ in controlled area; contact Ranger District for accessibility

Dale Residence (1083)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310010
Status: Excess
Comments: 1,480 sf.; residential; 84+ mons. vacant; repairs; asbestos; w/in controlled area; contact Ranger District for accessibility

Dale Residence (1006)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310011
Status: Excess
Comments: 684 sf.; residential; 120 mons. vacant; repairs needed; lead based paint; w/in controlled area; contact Ranger District for accessibility

Dale Modular (1098)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310012
Status: Excess
Comments: 1,344 sf.; residential; 84+ mons. vacant; fair conditions; asbestos; w/in controlled area; contact ranger District for accessibility

Dale Bunkhouse (1319)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310013
Status: Excess
Comments: 2,024 sf.; residential; 84+ mons. vacant; fair conditions; asbestos; w/in controlled area; contact Ranger District for accessibility

Dale Garage
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310014
Status: Excess
Comments: 360 sf.; storage; 84+ mons. vacant; good conditions; minor repairs; w/ in controlled area; contact Ranger District for accessibility

Dale Ranger Station (2002)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310015
Status: Excess
Comments: 1,768 sf.; storage; 84+ mons. vacant; poor conditions; asbestos; w/in controlled area; contact Ranger District for accessibility

Dale D.R. Residence (1002)
48743 Hwy 395 N.
Dale OR 97880
Landholding Agency: Agriculture
Property Number: 15201310018
Status: Excess
Comments: 1,830 sf.; residential; 84+ mons. vacant; major repairs needed; asbestos; w/ in controlled area; contact Ranger District for accessibility

**Suitable/Unavailable Properties**

*Building*

North Carolina

Old Legacy Tower Site
43682 Cape Point Campground Rd.
Buxton NC 27920
Landholding Agency: GSA
Property Number: 54201310006
Status: Excess
GSA Number: 4–U–NC–0739AB
Comments: 402sf. electronics; fair conditions

**Unsuitable Properties**

*Buildings*

Maryland

T18 & T21
Animal Center
Dickerson MD 20837
Landholding Agency: HHS
Property Number: 57201310001
Status: Unutilized
Comments: Located on scientific research campus; public access denied & no

alternative method to gain access w/out compromising nat'l security
Reasons: Secured Area

Wyoming

Fire Dispatch
3213 Duggleby Dr.
Cody WY 82414
Landholding Agency: Agriculture
Property Number: 15201310017
Status: Unutilized
Comments: Located w/in restricted area; public access denied & no alternative method to gain access w/out compromising nat'l security; 90% of property located on an airport runway
Reasons: Secured Area, Within airport runway clear zone

[FR Doc. 2013–04435 Filed 2–28–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5674–N–02]**

### Notice of HUD-Held Multifamily & Healthcare Loan Sale, Second Offering (MHLS 2013–1)

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of sale of mortgage loans.

**SUMMARY:** This notice announces HUD's intention to sell certain unsubsidized healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in the second offering of a competitive, open auction (MHLS 2013–1). Differing from past offerings, this sale will be conducted as an English auction. This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

**DATES:** A Bidder's Information Package (BIP) was made available to qualified bidders on February 20, 2013. Bids for the loans must be submitted on the bid date of March 6, 2013. HUD anticipates that awards will be made on or before March 7, 2013. Closings are expected to take place between March 11 and 29, 2013.

**ADDRESSES:** To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents will be available on the HUD Web site at *www.hud.gov/fhaloansales.* Please mail and fax executed documents to KEMA Advisors: KEMA Advisors, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, Attention: MLS 2013–1 Sale Coordinator, Fax: 1–978–967–8607.

**FOR FURTHER INFORMATION CONTACT:** John Lucey, Deputy Director, Asset Sales Office, Room 3136, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–8000; telephone 202–708–2625, extension 3927. Hearing- or speech-impaired individuals may call 202–708–4594 (TTY). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** HUD announces its intention to sell, in a second offering in MHLS 2013–1, certain unsubsidized mortgage loans (Mortgage Loans) secured by two healthcare properties located in Texas. The Mortgage Loans are non-performing mortgage loans. The listing of the Mortgage Loans is included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

Qualified bidders may submit bids on both Mortgage Loans or may bid on individual loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan. Interested Mortgagors should review the Qualification Statement to determine whether they may also be eligible to qualify to submit bids on one or more pools of Mortgage Loans or on individual loans in MHLS 2013–1.

**The Bidding Process**

The BIP describes in detail the procedure for bidding the second offering for MHLS 2013–1. The BIP also includes a standardized non-negotiable loan sale agreement (Loan Sale Agreement).

As part of its bid, each bidder must submit a minumim deposit of $25,000 HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. Closings are expected to take place between March 11 and March 29, 2013.

These are the essential terms of sale. The Loan Sale Agreement, which is be included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

**Due Diligence Review**

The BIP describes the due diligence process for reviewing loan files in MHLS 2013–1. Qualified bidders will be able to access loan information remotely via a high-speed Internet connection. Further information on performing due diligence review of the Mortgage Loans is provided in the BIP.

**Mortgage Loan Sale Policy**

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2013–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans, pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, (12 U.S.C. 1715z–11a(a)).

**Mortgage Loan Sale Procedure; New Offering Format**

HUD selected a competitive sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans. Differing from past offerings, this sale will be conducted as an English auction. Details of the auction process are provided in the BIP.

**Bidder Eligibility**

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in the second offering for MHLS 2013–1:

1. Any employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

2. Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24, and Title 2 of the Code of Federal Regulations, Part 24;

3. Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with MHLS 2013–1;

4. Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2013–1;

5. Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

6. Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2013–1;

7. Any affiliate, principal or employee of any person or entity that, within the two-year period prior to March 1, 2013, serviced any of the Mortgage Loans or performed other services for or on behalf of HUD;

8. Any contractor or subcontractor to HUD that otherwise had access to information concerning the Mortgage Loans on behalf of HUD or provided services to any person or entity which, within the two-year period prior to March 1, 2013, had access to information with respect to the Mortgage Loans on behalf of HUD;

9. Any employee, officer, director or any other person that provides or will provide services to the potential bidder with respect to such Mortgage Loans during any warranty period established for the Loan Sale, that serviced any of the Mortgage Loans or performed other services for or on behalf of HUD or within the two-year period prior to March 1, 2013, provided services to any person or entity which serviced, performed services or otherwise had access to information with respect to the Mortgage Loans for or on behalf of HUD;

10. Any mortgagor or operator that failed to submit to HUD on or before October 31, 2012, audited financial statements for fiscal years 2009 through 2012 (for such time as the project has been in operation or the prospective bidder served as operator, if less than three (3) years) for a project securing a Mortgage Loan;

11. Any individual or entity, and any Related Party (as such term is defined in the Qualification Statement) of such individual or entity, that is a mortgagor in any of HUD's multifamily and/or healthcare housing programs and that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD and fails to cure such default or violation by no later than February 28, 2013.

The Qualification Statement provides further details pertaining to eligibility requirements. Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in the second offering for MHLS 2013–1.

**Freedom of Information Act Requests**

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2013–1, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to MHLS 2013–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

**Scope of Notice**

This notice applies to the second offering for MHLS 2013–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: February 26, 2013.

**Laura M. Marin,**

*Acting General Deputy, Assistant Secretary for Housing.*

[FR Doc. 2013–04816 Filed 2–28–13; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

## U.S. Geological Survey

**[USGS–GX13LR000F60100]**

## Agency Information Collection Activities: Comment Request for the Production Estimate (2 Forms)

**AGENCY:** U.S. Geological Survey (USGS), Interior.

**ACTION:** Notice of an extension of a currently approved information collection (1028–0065).

**SUMMARY:** We (the USGS) will ask the Office of Management and Budget (OMB) to approve the information collection request (ICR) described below. This collection consists of 2 forms. The collection is a revision with a title change because it includes the previous transfer of USGS Form 9–4142–Q to Information Collection 1028–0062. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on July 31, 2013.

**DATES:** To ensure that your comments on this IC are considered, we must receive them on or before April 30, 2013.

**ADDRESSES:** Please submit a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 807, Reston, VA 20192 (mail); 703–648–7199 (fax); or *smbaloch@usgs.gov* (email). Reference Information Collection 1028–0065 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Shonta E. Osborne at 703–648–7960 (telephone); *sosborne@usgs.gov* (email); or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. This information will be published in the ''Mineral Commodity Summaries,'' the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

### II. Data

*OMB Control Number:* 1028–0065.

*Form Numbers:* 9–4042–A and 9–4124–A.

*Title:* Production Estimate.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Private sector: U.S. nonfuel minerals producers.

*Respondent Obligation:* Voluntary.

*Frequency of Collection:* Annually.

*Estimated Number of Annual Responses:* 1,614.

*Annual Burden Hours:* 403 hours. We expect to receive 1,614 annual responses. We estimate an average of 15 minutes per response.

*Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden:* We have not identified any ''non-hour cost'' burdens associated with this collection of information.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, et seq.) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

### III. Request for Comments

*Comments:* We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden time to the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

**John H. DeYoung, Jr.,**

*Director, National Minerals Information Center, U.S. Geological Survey.*

[FR Doc. 2013–04754 Filed 2–28–13; 8:45 am]

**BILLING CODE 4311–AM–P**

## DEPARTMENT OF THE INTERIOR

## National Park Service

**[NPS–WASO–NAGPRA–12278; 2200–1100–665]**

## Notice of Inventory Completion: Washington State Parks and Recreation Commission, Olympia, WA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Washington State Parks and Recreation Commission has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Washington State Parks and Recreation Commission. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Washington State Parks and Recreation Commission at the address below by April 1, 2013.

**ADDRESSES:** Alicia Woods, Washington State Parks and Recreation Commission, PO Box 42650, Olympia, WA 98504–2650, telephone (360) 902–0939.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Washington State Parks and Recreation Commission. The human remains were removed from Deception Pass State Park, Fidalgo Island, Skagit County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

### Consultation

A detailed assessment of the human remains was made by Washington State Parks and Recreation Commission professional staff in consultation with representatives of Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; and the Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington). The following tribes were invited to consult but did not participate: Confederated Tribes and Bands of the Yakama Nation (deferred, with a request to be kept informed); Confederated Tribes of the Colville Reservation (deferred); Lummi Tribe of the Lummi Reservation (deferred); Swinomish Indians of the Swinomish Reservation of Washington (absent at consultation); Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington) (repeatedly contacted without success); and the Upper Skagit Indian Tribe (absent at consultation).

### History and Description of the Remains

In 1978, human remains representing, at minimum, one individual were inadvertently discovered by park visitors within the Bowman Bay area of Deception Pass State Park on Fidalgo Island, in Skagit County, WA. This burial is adjacent to site 45–SK–8, but outside the site boundaries and buffer zone. No known individuals were identified. No associated funerary objects are present.

Between July 23 and 26, 1978, the human remains were investigated by the Skagit County Sheriff and Coroner who determined the remains were ''antiquital and not of recent origin,'' and removed the visible human remains. During that same year, the Washington State Office of Public Archaeology (hereinafter OPA), at the Washington State Parks' request, examined the burial site and discovered additional human remains. An OPA consultant and Washington State Parks staff contacted the Swinomish Indians of the Swinomish Reservation of Washington and the Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington) about the remains.

A physical anthropologist examined the remains and determined them to be of Native American descent based on cranial and dental morphological characteristics. Bowman Bay is within the traditional territory of the Samish, Sauk-Suiattle, Skagit, Stillaguamish, and Swinomish people. Ethnographic data provided by early travelers and visitors to the area, as well as archaeological surveys and excavation reports, document regular use of the area, predominantly by the Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington) and the Swinomish Indians of the Swinomish Reservation of Washington. In consultation, the Sauk-Suiattle Indian Tribe provided historical information about generations of family members living in the area and ritual use of the area in vision quests and spirit songs. The Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington) provided written evidence of geographic and kinship ties to the area, as well as oral traditional and historical evidence, and expert opinion linking the tribe to the location. Based on geographic and kinship evidence provided at consultation, Washington State Parks staff also determined a cultural affiliation of the human remains with the Skagit people and the Snohomish people (which are represented today by the Swinomish Indians of the Swinomish Reservation of Washington and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington), respectively).

**Determinations Made by the Washington State Parks and Recreation Commission**

Officials of the Washington State Parks and Recreation Commission have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington).

**Additional Requestors and Disposition**

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Alicia Woods, Washington State Parks and Recreation Commission, PO Box 42650, Olympia, WA 98504–2650, telephone (360) 902–0939, before April 1, 2013. Repatriation of the human remains to the Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; and the Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington) may proceed after that date if no additional claimants come forward.

Washington State Parks and Recreation Commission is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation; Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington); Sauk-Suiattle Indian Tribe; Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington); Swinomish Indians of the Swinomish Reservation of Washington; Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington); and the Upper Skagit Indian Tribe that this notice has been published.

Dated: February 5, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–04777 Filed 2–28–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–12263; 2200–1100–665]**

### Notice of Intent To Repatriate Cultural Items: U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Interior, Bureau of Indian Affairs, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the U.S. Department of the Interior, Bureau of Indian Affairs.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the U.S. Department of the Interior, Bureau of Indian Affairs at the address below by April 1, 2013.

**ADDRESSES:** Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items under the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

At unknown dates prior to and during 1943, cultural items were removed from a number of sites on the Gila River Indian Reservation, Pinal County, AZ, during archeological excavations. The items were reportedly found in association with human burials, but the human remains are not present in the collections. The 283 unassociated funerary objects are 144 beads, 60 ceramic bowls, 4 figurines, 51 ceramic jars, 3 mortars, 1 pipe, 11 ceramic plates, and 9 ceramic scoops.

Archeological, biological, historical, kinship, linguistic, and oral traditional evidence, as well as a cultural affiliation study, indicate that the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and the Tohono O'odham Nation of Arizona (hereafter referred to as ''The Four Southern Tribes of Arizona'') all have cultural ties to the sites from which the above mentioned unassociated funerary objects were recovered.

**Determinations Made by the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC**

Officials of the Bureau of Indian Affairs have determined that*:*

• Pursuant to 25 U.S.C. 3001(3)(B), the 283 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and The Four Southern Tribes of Arizona.

**Additional Requestors and Disposition**

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Anna Pardo, Museum Program Manager/NAGPRA Coordinator, U.S. Department of the Interior, Indian Affairs, 12220 Sunrise Valley Drive, Room 6084, Reston, VA 20191, telephone (703) 390–6343, before April 1, 2013. Repatriation of the unassociated funerary objects to The Four Southern Tribes of Arizona may proceed after that date if no additional claimants come forward.

The Bureau of Indian Affairs is responsible for notifying The Four Southern Tribes of Arizona that this notice has been published.

Dated: February 1, 2013.

**Melanie O'Brien,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. 2013–04780 Filed 2–28–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–12124; 2200–1100–665]**

### Notice of Intent To Repatriate Cultural Items: Arizona State Museum, University of Arizona, Tucson, AZ

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Arizona State Museum, University of Arizona, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of sacred objects and objects of cultural patrimony, and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the Arizona State Museum, University of Arizona.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the Arizona State Museum, University of Arizona at the address below by April 1, 2013.

**ADDRESSES:** John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–2950.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ, that meet the definition of sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

In August 1912, Arizona State Museum Director Byron Cummings collected nine prayer sticks (catalog nos. 87a–c, 88a–c, 89a–c) and three prayer plumes (catalog no. 90a–c) from a Hopi Snake Dance at Oraibi, and six prayer plumes (catalog no. 91a–f) from a Hopi Flute Dance at Mishongnovi. In 1915, Dr. Cummings acquired four Hopi women's dance wands (catalog nos. 85a & b, 86a & b) at Oraibi. In 1919, Dr. Cummings collected a prayer offering (catalog no. 3973) at a Hopi village. Also in 1919, Dr. Cummings purchased four women's dance wands (catalog nos. 3899–3902) from Mrs. Elizabeth Stanley. In August 1920, Dr. Cummings collected a feather headdress (catalog no. 3975), a gourd rattle (catalog no. 3976), a tortoise shell leg rattle (catalog no. 3994), four anklets (catalog nos. 3983a & b, 3984a & b), a leather girdle (catalog no. 3987), four armbands (catalog nos. 3995a & b, 3996a & b), a necklace (catalog no. 3993), and a dance kilt (catalog no. 5436) that had been used by a Hopi Snake Priest at the village of Walpi. In 1923, Dr. Cummings collected a feather bundle (catalog no. 3974) from a Hopi village, a feather headdress (catalog no. 3977) from a Hopi Buffalo Dance, and a cornhusk ceremonial tiara (catalog no. 13136) at Walpi. In 1931, Dr. Cummings collected a feather wand (catalog no. 5588) at a Hopi village. All of the objects collected by Dr. Cummings were subsequently accessioned by the Arizona State Museum.

In 1919, the Arizona State Museum purchased a Hopi feather tuft (catalog no. 8508) from the Nelle Dermont Collection. In 1926, Harold Gladwin collected a Hopi tortoise carapace rattle (catalog no. GP399) for the Gila Pueblo Foundation. In 1926, the Gila Pueblo Foundation purchased a turtle carapace rattle (catalog no. GP4761) from Alice McAdams. In 1950, the Gila Pueblo Foundation closed and these two objects were donated to the Arizona State Museum. In 1929, an unknown donor presented a Hopi turtle shell rattle (catalog no. 18498) to the Arizona State Museum. In May 1933, the Arizona State Museum purchased a set of a Hopi Snake Priest's regalia at the village of Polacca. These objects include a sash (catalog no. 19757), two kilts (catalog nos. 19758, 19760), a medicine bundle (catalog no. 19759), a wand (catalog no. 19762), a pouch (catalog no. 19764), two anklets (catalog nos. 19761a & b), a hair tie (catalog no. 19763), and a moccasin (catalog no. 19765a). In 1943, L.F. Brady donated three Hopi prayer sticks (cat nos. E–1787–1789) to the Arizona State Museum. In 1958, Father Victor Stoner donated a Snake Dance kilt (cat no. E–3606) to the Arizona State Museum. In 1959, Mr. F.T. Alkire donated a Hopi turtle shell rattle (catalog no. 91–57–37) to the Arizona Historical Society. In 1991, the object was transferred to the Arizona State Museum as part of an exchange.

In 1965, the Arizona State Museum purchased a polychrome medicine bowl (cat no. E–6393a) and two netted gourd water bottles (cat nos. E–6393b & 6394) from Bahti Indian Arts. These objects had been used by a Mishongnovi kiva priest. In 1966, Tom Bahti donated an unused katsina mask (cat no. E–6701) to the Arizona State Museum. In 1966, Mrs. Gordon Vivian donated two prayer sticks (cat nos. E–6733–x–1, x–2) that she had obtained at the village of Hano to the Arizona State Museum. In 1966, Mrs. Edwin Carpenter donated a Hopi prayer stick (cat no. E–6858) to the Arizona State Museum. In 1969, the Arizona State Museum purchased a Hopi polychrome effigy canteen (cat no. E–8370) from W.R. Stone.

These items all appear to be Hopi by virtue of the circumstances of their acquisition, and/or through identification by Hopi cultural specialists. Specific knowledge provided by the Society Priests of the Hopi Tribe gives a positive identification to substantiate ownership of these sacred and religious items. These objects are regarded as sacred objects and as objects of cultural patrimony, which are used by the Momngwit in the Hopi villages for the practice of the Hopi Religion. The Hopi Cultural Preservation Office of the Hopi Tribe, representing the Society Priests, pursuant to section 7.(a)(2) of P.L. 101–601 and Hopi Tribal Council Resolution H–70–94, hereby asserts cultural affiliation to the sacred and religious items as described. These items are identified as sacred and religious objects, and are objects of cultural patrimony.

**Determinations Made by the Arizona State Museum, University of Arizona**

Officials of the Arizona State Museum, University of Arizona have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the 72 cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(3)(D), the same 72 cultural items described

above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the cultural items listed above and the Hopi Tribe of Arizona.

**Additional Requestors and Disposition**

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects and objects of cultural patrimony should contact John McClelland, NAGPRA Coordinator, Arizona State Museum, University of Arizona, P.O. Box 210026, Tucson, AZ 85721, telephone (520) 626–2950, before April 1, 2013. Repatriation of the sacred objects and objects of cultural patrimony to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The Arizona State Museum is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: January 15, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–04770 Filed 2–28–13; 8:45 am]

**BILLING CODE 4312–50–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–12277; 2200–1100–665]**

### Notice of Intent To Repatriate Cultural Items: San Francisco State University NAGPRA Program, San Francisco, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The San Francisco State University NAGPRA Program, in consultation with the appropriate Indian tribe, has determined that the cultural items meet the definition of sacred objects and objects of cultural patrimony and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the San Francisco State University NAGPRA Program.

**DATES:** Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the San Francisco State University NAGPRA Program at the address below by April 1, 2013.

**ADDRESSES:** Jeffrey Boland Fentress, San Francisco State University NAGPRA Program, c/o Department of Anthropology, San Francisco State University, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 338–3075.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the San Francisco State University NAGPRA Program that meet the definition of sacred objects and objects of cultural patrimony under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

**History and Description of the Cultural Items**

Based on the request for repatriation submitted by the Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California), each of the objects below meet the definition of either sacred objects or objects of cultural patrimony under 25 U.S.C. 3001 and 43 CFR 10.2 (d)(2)(ii), (d)(3), or (d)(4). Through the summary, consultation, and notification procedures in 43 CFR 10.14, the cultural affiliation of the cultural items below with the Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California) was established.

In 1965, 12 cultural items were removed from sites CA–SON–408 and CA–SON–409 in Sonoma County, CA, by San Francisco State University during an archaeological survey by A.E. Treganza of San Francisco State University. The artifacts were catalogued under both site numbers; it is unknown which artifacts came from which site. Based on consultation and ethnographic research, the sacred object and object of cultural patrimony is 1 clay pipe fragment. Based on consultation and ethnographic research, the objects of cultural patrimony are 4 obsidian tools or flakes, 5 chert tools or flakes, and 2 crab claws. The age of site CA–SON–408 and CA–SON–409 is unknown but the site is located within the historically documented territory of Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California).

At an unknown date, 1 cultural item, a pestle, was removed from site CA–SON–UNK (Dry Creek) in Sonoma County, CA. At an unknown date, the pestle labeled ''Dry Creek near Healdsburg, CA'' was donated to the San Francisco State University, Department of Anthropology, by an unknown person. Based on consultation and ethnographic research, the pestle is an object of cultural patrimony. The age of site CA–SON–UNK (Dry Creek) is unknown but the site is located within the historically documented territory of Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California).

In 1965, 2 lots of cultural items were removed from unknown archaeological sites, CA–SON–UNK (Knights Valley), in Sonoma County, CA, by San Francisco State University during an archaeological survey by A.E. Treganza of San Francisco State University. Based on consultation and ethnographic research, the objects of cultural patrimony are 1 lot of approximately 10 obsidian tools or flakes and 1 lot of approximately 4 chert tools or flakes. The age of site CA–SON–UNK (Knights Valley) is unknown but the site is located within the historically documented territory of the Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California).

**Determinations Made by the San Francisco State University NAGPRA Program**

Officials of the San Francisco State University NAGPRA Program have determined that:

• Pursuant to 25 U.S.C. 3001(3)(C), the 1 sacred object and object of cultural patrimony described above is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents and this cultural item is also an object of cultural patrimony has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.

• Pursuant to 25 U.S.C. 3001(3)(D), the 12 individual and 2 lots of objects of cultural patrimony described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself,

rather than property owned by an individual.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and object of cultural patrimony, and the objects of cultural patrimony and the Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California).

**Additional Requestors and Disposition**

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred object and object of cultural patrimony, or the objects of cultural patrimony should contact Jeffrey Boland Fentress, San Francisco State University NAGPRA Program, c/o Department of Anthropology, San Francisco State University, 1600 Holloway Avenue, San Francisco, CA 94132, telephone (415) 338–3075 before April 1, 2013. Repatriation of the sacred object and object of cultural patrimony and the objects of cultural patrimony to the Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California) may proceed after that date if no additional claimants come forward.

The San Francisco State University NAGPRA Program is responsible for notifying the Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California) that this notice has been published.

February 5, 2013.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2013–04772 Filed 2–28–13; 8:45 am]

**BILLING CODE 4312–50–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–749 (Third Review)]**

## Persulfates From China; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Persulfates From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on persulfates from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is April 1, 2013. Comments on the adequacy of responses may be filed with the Commission by May 14, 2013. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

**DATES:** *Effective Date:* April 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On July 7, 1997, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of persulfates from China (62 FR 36259). Following first five-year reviews by Commerce and the Commission, effective December 24, 2002, Commerce issued a continuation of the antidumping duty order on imports of persulfates from China (67 FR 78415). Following second five-year reviews by Commerce and the Commission, effective April 21, 2008, Commerce issued a continuation of the antidumping duty order on imports of persulfates from China (73 FR 21318). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination and its expedited first and second five-year review determinations, the Commission found a single *Domestic Like Product* consisting of ammonium, sodium, and potassium persulfates, coextensive with the scope of the order.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Like Product* as producers of ammonium, sodium, and potassium persulfates.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–282, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is April 1, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is May 14, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information To be Provided In Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2006.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2012, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or

trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2012 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2006, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: February 26, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–04763 Filed 2–28–13; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Docket No. 2941]**

### Certain Radio Frequency Identification (''RFID'') Products and Components Thereof; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Radio Frequency Identification (''RFID'') Products and Components Thereof,* DN 2941; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

**FOR FURTHER INFORMATION CONTACT:** Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the

Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Neology, Inc. on February 22, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio frequency identification (''RFID'') products and components thereof. The complaint names as respondents Federal Signal Corporation of IL; Federal Signal Technologies, LLC of CA; Sirit Corp. of CA; and 3M Company of MN.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2941'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 25, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–04767 Filed 2–28–13; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1103 (Review)]**

### Certain Activated Carbon From China

### Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on certain activated carbon from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

### Background

The Commission instituted this review on March 1, 2012 (77 FR 12614) and determined on June 4, 2012 that it would conduct a full review (77 FR 38082, June 26, 2012). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 26, 2012 (77 FR 38082). The hearing was held in Washington, DC, on December 18, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on February 22, 2013. The views of the Commission are contained in USITC Publication 4381 (February 2013), entitled *Certain Activated Carbon from China: Investigation No. 731–TA–1103 (Review).*

By order of the Commission.

Issued: February 22, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–04762 Filed 2–28–13; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–839]**

### Certain Consumer Electronics, Including Mobile Phones and Tablets; Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the HTC Respondents From the Investigation; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined not to review an initial determination (''ID'') (Order No. 35) issued by the presiding administrative law judge (''ALJ'') in the above-captioned investigation terminating the last respondents.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** This investigation was instituted on April 24, 2012, based on a complaint filed by Pragmatus AV, LLC of Alexandria, Virginia alleging a violation of section 337 in the importation, sale for importation, or sale within the United States after importation of certain consumer electronics, including mobile phones and tablets, by reason of infringement of certain claims of U.S. Patent Nos. 5,854,893; 6,237,025; 7,054,904; 7,185,054; and 7,206,809. 77 FR 24514 (Apr. 24, 2012). The Commission named ASUSTeK Computer, Inc. of Taipei City, Taiwan, ASUS Computer International, Inc. of Fremont, California; HTC Corporation of Taoyuan, Taiwan, HTC America, Inc. of Bellevue, Washington (collectively, ''HTC''); LG Electronics, Inc. of Seoul, Republic of Korea, LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey, LG Electronics MobileComm U.S.A., Inc. of San Diego, California; Pantech Co., Ltd. of Seoul, Republic of Korea, Pantech Wireless, Inc. of Atlanta, Georgia; Research In Motion Ltd. of Ontario, Canada and Research In Motion Corp. of Irving, Texas; Samsung Electronics Co., Ltd of Seoul, Republic of Korea, Samsung Electronics America, Inc. of Ridgefield Park, New Jersey, and Samsung Telecommunications America, L.L.C. of Richardson, Texas as respondents. *Id.* The Commission's Office of Unfair Import Investigations (''OUII'') is also a party in this investigation. *Id.* Subsequently, all respondents other than HTC were terminated from the investigation based on settlement agreements.

On January 22, 2013, complainant and the HTC respondents filed a joint motion to terminate HTC from the investigation based on a settlement. The OUII supported the motion.

On February 4, 2013, the ALJ issued an ID (Order No. 35) granting the motion. The ALJ found that termination of the investigation based on settlement was in the public interest. No party petitioned for review of the ID, and the Commission has determined not to review it. The investigation has been terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

By order of the Commission.

Issued: February 22, 2013.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–04761 Filed 2–28–13; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–871]**

### Certain Wireless Communications Base Stations and Components Thereof; Institution of Investigation Pursuant to 19 U.S.C. 1337

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 24, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Adaptix, Inc. of Carrolton, Texas. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communications base stations and components thereof by reason of infringement of U.S. Patent No. 6,870,808 (''the '808 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

**ADDRESSES:** The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**FOR FURTHER INFORMATION CONTACT:** The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

**Authority:** The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

*Scope of Investigation:* Having considered the complaint, the U.S. International Trade Commission, on February 22, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a

violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless communications base stations and components thereof by reason of infringement of one or more of claims 1, 2, 4, 9, 13–16, 20, 21, 31, 32, 34, and 41 of the '808 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. 1337(d)(1), (f)(1), (g)(1)

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Adaptix, Inc., 4100 Midway Road, Suite 2010, Carrolton, TX 75007.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Telefonaktiebolaget LM Ericsson, Torshamnsgatan 23, Kista, 164 83 Stockholm, Sweden.

Ericsson Inc., 6300 Legacy Drive, Plano, TX 75024.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: February 25, 2013.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2013–04764 Filed 2–28–13; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Connected Media Experience, Inc.

Notice is hereby given that, on February 5, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Connected Media Experience, Inc. (''CMX'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Omediae, LLC a.k.a Pypeline, Kapaa, HI, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CMX intends to file additional written notifications disclosing all changes in membership.

On March 12, 2010, CMX filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 16, 2010 (75 FR 20003).

The last notification was filed with the Department on November 23, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 19, 2012 (77 FR 75190).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2013–04729 Filed 2–28–13; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Robotics Technology Consortium, Inc.

Notice is hereby given that, on February 5, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Robotics Technology Consortium, Inc. (''RTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AM General LLC, Livonia, MI; Auburn University, Auburn, AL; DRS Sustainment Systems, Inc., St. Louis, MO; Eurisko Institute LLC, Monticello, FL; Humanistic Robotics, Inc., Philadelphia, PA; Polaris Sales, Inc., Medina, MN; TDC Acquisition Holdings, Inc., Huntsville, AL; Tech Wise, Colorado Springs, CO; University of Arizona, Tuscon, AZ; University of Texas at Arlington (Research Institute), Fort Worth, TX; and Whitney, Bradley & Brown, Inc., Reston, VA, have been added as parties to this venture.

Also, Butterfly Haptics, LLC, Pittsburgh, PA; EmergentViews, Inc., San Francisco, CA; International Computer Science Institute, Berkley, CA; L–3 Services Inc., Burlington, MA; National Robotics Training Center (NRTC) Florence Darlington Technical College, Florence, SC; Neptec USA Inc., Houston, TX; Northwest UAV Propulsion Systems, McMinnville, OR; rChordata, LLC, Charlotte, NC; Sky Research, Inc., Etna, NH; and TYZX, Inc., Menlo Park, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RTC intends to file additional written notifications disclosing all changes in membership.

On October 15, 2009, RTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 30, 2009 (74 FR 62599).

The last notification was filed with the Department on April 30, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 8, 2012 (77 FR 34067).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2013–04727 Filed 2–28–13; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Bureau of International Labor Affairs; Office of Trade and Labor Affairs; Labor Affairs Council of the United States-Korea Free Trade Agreement; Notice of Public Session Meeting

**AGENCY:** International Labor Affairs Bureau (ILAB), U.S. Department of Labor.

**ACTION:** Notice of Public Session Meeting, March 19, 2013.

**SUMMARY:** Pursuant to Article 19.5 of the U.S.-Korea Free Trade Agreement (KORUS FTA), the International Labor Affairs Bureau (ILAB) of the U.S. Department of Labor gives notice of the public session of the meeting of the Labor Affairs Council (''Council'' or ''LAC''). The LAC public session will be held the morning of March 19, 2013. The purpose of the public session is to provide an opportunity for the Council to meet with the public to discuss matters related to the implementation of Chapter 19 (the Labor Chapter) of the KORUS FTA, including activities of the Labor Cooperation Mechanism established under Article 19.6 of the FTA.

**DATES:** The LAC public session will be held on Tuesday, March 19, 2013, from 9:00 a.m. to 11:30 a.m. ILAB requests those interested in attending provide their name, title, and any organizational affiliation to Emma Laury, Office of Trade and Labor Affairs, ILAB, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5303, Washington, DC 20210; phone (202) 693–4811; fax (202) 693–4851 (This is not a toll free number.); *Laury.Emma.2@dol.gov,* by Monday, March 4, 2013.

**ADDRESSES:** The LAC will meet at the U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Exact room information will be provided upon arrival.

**FOR FURTHER INFORMATION CONTACT:** Emma Laury, Office of Trade and Labor Affairs, ILAB, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–5303, Washington, DC 20210; phone (202) 693–4811; *Laury.Emma.2@dol.gov*. Individuals with disabilities wishing to attend the meeting should contact Ms. Laury no later than March 4, 2013, to obtain appropriate accommodations.

**SUPPLEMENTARY INFORMATION:** The LAC meeting is open to the public on a first-come, first-served basis, as seating is limited. Attendees must present valid identification and will be subject to security screening to access the Department of Labor for the meeting.

*Agenda:* Agenda items will include a presentation by the Council on the discussions held during the intergovernmental LAC meeting and an opportunity for questions from the public on matters related to the implementation of the Labor Chapter of the KORUS FTA.

*Public Participation:* The LAC will receive oral comments and questions from the audience during the meeting. The Department of Labor is also open to written comments or questions, submitted to Emma Laury at the contact information listed above, by March 4, 2013. Such written submissions will be provided to Council members and will be included in the record of the meeting.

Signed at Washington, DC, the 25th day of February, 2013.

**Carol Pier,**

*Acting Deputy Undersecretary, Bureau of International Labor Affairs.*

[FR Doc. 2013–04916 Filed 2–27–13; 4:15 pm]

**BILLING CODE 4510–28–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**RIN 1210–AB51**

### Final Revision and Publication of the 2012 Form M–1, Notice

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice of 2012 Form M–1 Revisions and Availability.

**SUMMARY:** This document announces revisions to the Form M–1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs), and its availability. The revisions can be viewed on the Employee Benefits Security Administration's (EBSA) Web site at *www.dol.gov/ebsa.* The revised form is substantively different from previous versions of the Form M–1. Elsewhere in this edition of the **Federal Register**, EBSA is publishing Final Rules for Filings Required for Multiple Employer Welfare Arrangements and Certain Other Related Entities. These rules amend the existing MEWA regulations to implement the registration requirement added to section 101(g) of Title I of the Employee Retirement Income Security Act of 1974, (ERISA), as amended by the Patient Protection and Affordable Care Act (Affordable Care Act), as well as to enhance compliance, enforcement, and protection of employer-sponsored health benefits. The form and the accompanying instructions facilitate the filing requirements for MEWAs and ECEs under ERISA.

**FOR FURTHER INFORMATION CONTACT:** For inquiries regarding the Form M–1 filing requirement, contact Allison Goodman or Suzanne Bach, Office of Health Plan Standards and Compliance Assistance, at (202) 693–8335. This is not a toll-free number. For inquiries regarding how to obtain or file a Form M–1, see the **SUPPLEMENTARY INFORMATION** section below.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191, 110 Stat. 1936) (HIPAA) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. HIPAA also added section 101(g) to ERISA, 29 U.S.C. 1021(g), providing the Secretary with the authority to require, by regulation, annual reporting by MEWAs that are not ERISA-covered plans. The Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, 124 Stat. 119 (2010), amended section 101(g) of ERISA to require that such MEWAs register with the Department prior to operating in a State. Specifically, this section now provides that the Secretary shall, by regulation, require multiple employer welfare arrangements providing benefits consisting of medical care (within the meaning of section 733(a)(2) of ERISA, 29 U.S.C. 1191b(a)(2)) which are not ERISA-covered group health plans to register with the Secretary prior to operating in a State and may, by regulation, require such MEWAs to report, not more

frequently than annually, in such form and such manner as the Secretary may require for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA are being carried out in connection with such benefits.

In addition to the relevant provisions of HIPAA and the Affordable Care Act, other laws are also set forth in part 7 of ERISA with which MEWAs and ECEs must annually report compliance. A Self-Compliance Tool, which may be used to help assess an entity's compliance with part 7 of ERISA, will continue to be included in the Form M–1 instructions. The current version of that document is available at *http://www.dol.gov/ebsa/healthlawschecksheets.html.* The Self-Compliance Tool undergoes changes to reflect the current provisions of part 7 of ERISA as they become effective.

**II. Discussion of the Revisions**

*A. Final Regulatory Amendments*

The Department is simultaneously publishing Final Rules in today's **Federal Register** that amend the original Form M–1 requirements under § 2520.101–2, implement the new registration requirement enacted by the Affordable Care Act, and amend the Department's annual reporting regulations to strengthen the Form M–1 requirements for all MEWAs and ECEs. The new registration requirement is an important new enforcement tool to help Federal and State regulators better identify and monitor MEWAs and ECEs and give the Secretary authority to collect additional information than had been collected in previous versions of the Form M–1, including custodial and financial information.

*B. Overview of Form Revisions*

To reflect the regulatory amendments to the Form M–1 reporting requirements, the Department has made revisions, described in the paragraphs below, to the Form M–1. Corresponding changes were also made to the Form M–1 instructions including the line-by-line instructions. The revisions result in a Form M–1 that is substantially different from previous versions of the Form M–1. The changes described below are very similar to those described in the notice of proposed form revisions published in the **Federal Register** on December 6, 2011 (76 FR 76250). Changes have been made to the proposed form and instructions only to reflect modifications to the final rule and to provide greater clarity.

Part I of the 2012 Form M–1 requires filers to indicate the type of filing entity (i.e. plan MEWA, non-plan MEWA, or an ECE) and the type of filing being submitted (i.e. annual report, registration, origination, or special filing).

Part II of the 2012 Form M–1 requires more extensive custodial and financial information than requested in previous versions of the Form M–1. In addition to providing information regarding the entity's administrator and entity's sponsor, the 2012 Form M–1 now requires an entity to report individuals associated with the entity as follows: Agent for service of process or registered agent; members of the Board, officers, trustees, custodians; promoters and/or agents responsible for marketing; any person, financial institution, or other entity holding assets; any actuaries providing services; any third party administrator (TPA) with whom the MEWA or ECE has a contract with; any person or entity that has authority or control over the assets of the MEWA or ECE or over assets paid to the entity by plans or employers for the provision of benefits; any person or entity that has discretionary authority, control, or responsibility with respect to the administration of the MEWA or ECE or any benefit program offered by it; and information regarding any merger with another filing entity. Additionally, the 2012 Form M–1 now requires the filing entity to respond to several ''yes or no'' questions with respect to the entity's assets and the fiduciaries responsible for those assets.

Part II of the 2012 Form M–1 includes information previously contained in Part III of the Year 2011 Form M–1 and includes several modifications that capture information regarding entities that are operating in a State. Pursuant to the definition of ''operating'' in the final rule published elsewhere in today's edition of the **Federal Register**, these modifications may apply to entities that are not actively providing coverage.

The information collected in Part III of the 2012 Form M–1 (previously designated as Part IV in the Year 2011 Form M–1) remains generally unchanged, except information regarding legal proceedings is now included in Part II of the 2012 Form M–1.

**III. Filing the Form M–1**

This document announces the availability of the 2012 Form M–1. Pursuant to the final rule, administrators are now required to file the Form M–1 electronically using the online filing system. Detailed information on electronic filing is available at *www.askebsa.dol.gov/mewa2013*. For assistance on completing the Form M–1, call the Form M–1 Help Desk at 202–693–8360. For questions regarding the electronic filing system, contact the EBSA computer Help Desk at (202) 693–8600.

*A. In General*

The Form M–1 is required to be filed annually by March 1 following each calendar year during all or part of which the MEWA is operating, and for three calendar years following an origination during all or part of which the ECE is operating.

Pursuant to the new registration requirement enacted by the Affordable Care Act, the administrator of a MEWA is also required to file the Form M–1 30 days prior to operating in any State. In addition, the administrator of a MEWA must file the Form M–1 within 30 days of: (1) Knowingly operating in any additional State or States that were not indicated on a previous Form M–1 filing; (2) operating with regard to the employees of an additional employer (or employers, including one or more self-employed individuals) after a merger with another MEWA; (3) the date the number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar year; (4) or experiencing a material change (as described in the accompanying instructions to the Form M–1).

The administrator of an ECE is required to file the Form M–1 during the three-year period following any of the following origination events: (1) The ECE begins operating with regard to the employees of two or more employers (including one or more self-employed individuals); (2) the ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated three years prior to the merger); or (3) the number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger).

With respect to the events described above, the administrator of an ECE is required to file 30 days before it begins operating with regard to the employees of two or more employers (including one or more self-employed individuals), and within 30 days of: (1) When the ECE begins operating following a merger with another ECE (unless all of the ECEs

that participate in the merger previously were last originated three years prior to the merger); and (2) when the number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger). In addition, during any three year period in which the ECE is required to file a Form M–1, the ECE must make a special filing within 30 days after it begins knowingly operating in any additional State or States that were not indicated on a previously required Form M–1 filing or experiences a material change (as described in the accompanying instructions to the Form M–1).

A 60-day one-time extension of time to file will automatically be granted if the administrator of the MEWA or ECE requests an extension pursuant to the Form M–1 instructions.

*B. The 2012 Form M–1*

The filing deadlines for the 2012 Form M–1 have been delayed due to the addition of the all-electronic filing requirement and to allow filers to become familiar with the new filing requirements and deadlines. For annual reports, the 2012 Form M–1 is now due May 1, 2013, with an extension until July 1, 2013 available. For registration, origination, or special filings, the 2012 Form M–1 is due for events beginning on or after July 1, 2013, with a 60-day extension available.

More details on filing requirements are available in the final rule published elsewhere in this edition of the **Federal Register**. As noted previously in this notice, a Self-Compliance Tool, which may be used to help assess an entity's compliance with part 7 of ERISA, will continue to be included in the Form M–1 instructions. The current version of that document is available at *http://www.dol.gov/ebsa/pdf/cagappa.pdf.*

EBSA is committed to working together with administrators to help them comply with the Form M–1 filing requirements. While the Form M–1 is now required to be filed electronically, printed copies will be available for reference by calling the EBSA toll-free publication hotline at 1–866–444–EBSA (3272). Questions on completing the Form M–1 are being directed to the EBSA Help Desk at (202) 693–8360. For questions regarding the electronic filing system, contact the EBSA computer Help Desk at (202) 693–8600.

## IV. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512.

This notice revises the information collection request (ICR) titled the ''Annual Report for Multiple Employer Welfare Arrangements (Form M–1)'' approved by OMB under OMB Control Number 1210–0116, which currently is scheduled to expire on February 29, 2016. For the hour and cost burden associated with this revision, please see the regulation titled ''Filings Required of Multiple Employer Welfare Arrangements and Certain Other Entities that Offer or Provide Coverage for Medical Care to the Employees of Two or More Employers,'' which is published elsewhere in today's issue of the **Federal Register**.

**Statutory Authority:** 29 U.S.C. 1021–1024, 1027, 1029–31, 1059, 1134 and 1135; Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1181–1183, 1181 note, 1185, 1185a–d, and 1191–1191c. Sec. 2520.103–1 also issued under 26 U.S.C. 6058 note. Sec. 2520.101–6 also issued under sec. 502(a)(3), 120 Stat. 780, 940 (2006); Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–d, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–3 is also issued under 29 U.S.C. 1021(i).

Signed at Washington, DC, this 26th day of February, 2013.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration.*

[FR Doc. 2013–04865 Filed 2–28–13; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**RIN 1210–AB51**

### Revision of Annual Information Return/Reports

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice of adoption of revisions to Annual Return/Report Forms.

**SUMMARY:** This document contains revisions to the Form 5500 Annual Return/Report filed by administrators of certain employee welfare benefit plans that are required to comply with the Form M–1 reporting requirements of 29 CFR 2520.101–2. The revisions are intended to enhance the Department of Labor's ability to enforce the Form M–1 reporting requirements under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). These forms revisions are being published simultaneously with final regulations under Title I of ERISA that implement reporting requirements for MEWAs and certain other entities that offer or provide coverage for medical care benefits for employees of two or more employers.

**DATES:** *Effective Date:* April 1, 2013. *Applicability Date:* These forms revisions will be applicable for all Form 5500 Annual Return/Report filings beginning with the 2013 Form 5500.

**FOR FURTHER INFORMATION CONTACT:** Janet K. Song, Office of Regulations and Interpretations, Employee Benefits Security Administration, Department of Labor, at (202) 693–8523. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under Titles I and IV of ERISA, and the Internal Revenue Code (Code), as amended, and regulations issued thereunder, pension and welfare benefit plans are generally required to file an annual report concerning, among other things, the financial condition and operation of the plans. Filing the Form 5500 Annual Return/Report of Employee Benefit Plan (Form 5500 Annual Return/Report), including any required attachments and schedules, generally satisfies the annual reporting requirements. The Form 5500 Annual Return/Report is the principal source of information and data concerning the operations, funding and investments of pension and welfare benefit plans. The Form 5500 Annual Return/Report constitutes an integral part of the

enforcement, research and policy development programs of the Department of Labor (Department), the Internal Revenue Service, and the Pension Benefit Guaranty Corporation, and is a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Annual Return/Report also serves as the primary means by which the operations of plans can be monitored by participants, beneficiaries, and the general public.

In addition to filing the Form 5500 Annual Return/Report, certain employee welfare benefit plans that are multiple employer welfare arrangements (MEWAs), as defined in section 3(40) of ERISA, and Entities Claiming Exception (ECEs), as defined in § 2520.101–2, are also subject to the reporting requirements under § 2520.101–2, which are satisfied by filing a Form M–1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Other Entities Claiming Exception (ECEs)* (Form M–1).

## II. Multiple Employer Welfare Arrangements and Certain Other Related Entities

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, 110 Stat. 1936) amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage. HIPAA added section 101(g) to ERISA, providing the Secretary of Labor (Secretary) with the authority to establish, by regulation, annual reporting by MEWAs that are not themselves employee benefit plans within the meaning of ERISA section 3(3) (non-plan MEWAs). The purpose of the reporting requirement was to determine whether MEWAs were in compliance with the requirements created by HIPAA. The Patient Protection and Affordable Care Act (Affordable Care Act), Public Law 111–148, 124 Stat. 119 (2010), amended section 101(g) of ERISA to require non-plan MEWAs to register with the Department prior to operating in a State.

On February 11, 2000, the Department published an interim final rule implementing the Form M–1 regulation under § 2520.101–2. 65 FR 7152. On April 9, 2003, the Department published the final rule. 68 FR 17494. Although ERISA section 101(g) by its terms only applies to non-plan MEWAs, in order to effectuate MEWA compliance and based on the regulatory authority found in ERISA sections 505 and 734, the Form M–1 regulation required administrators of non-plan MEWAs, plan MEWAs, and certain other entities [1] to file the Form M–1 with the Secretary.[2] ERISA sections 505 and 734 provide the Secretary with the authority to require plan MEWAs and ECEs to comply with the Form M–1 reporting requirements of § 2520.101–2, but because ERISA section 101(g) only applies to non-plan MEWAs, only non-plan MEWAs are subject to civil penalties under ERISA section 502(c)(5) for failure to comply with the Form M–1 requirements.[3]

On December 6, 2011, the Department published in the **Federal Register** proposed rules on Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities, proposing amendments to the Form M–1 reporting regulation under ERISA section 101(g) and the annual reporting regulations under ERISA sections 103 and 104. The purpose of the proposed changes was to strengthen the Form M–1 reporting requirements for all plans required to file the Form M–1. 76 FR 76222. Simultaneously, the Department published a notice of proposed forms revisions to the Form 5500 Annual Return/Report (76 FR 76252) and a notice of proposed forms revisions to the Form M–1 (76 FR 76250).

The Department received six comments on the proposed amendments to the Form M–1 regulation and proposed form revisions to the Form M–1, but did not receive any comments on the proposed amendments to the annual reporting regulations under ERISA sections 103 and 104 or the proposed revisions to the Form 5500 Annual Return/Report. Therefore the Department has decided to adopt the changes to the annual reporting regulations under ERISA sections 103 and 104 and revisions to the Form 5500 Annual Return/Report largely as proposed, except for technical changes to the Form 5500 Annual Return/Report and instructions to clarify the Form 5500 reporting requirements and conform them to the final Form M–1 regulation by making it clear that all plans required to file the Form M–1 (plan MEWAs and ECEs) are required to file a Form 5500 and answer the new Form M–1 compliance questions on the Form 5500.[4] The changes to the Form 5500 Annual Return/Report and instructions are applicable for all Form 5500 Annual Return/Report filings beginning with the 2013 Form 5500. For the 2013 Form 5500, the compliance questions will be included in the Form 5500 instructions and welfare benefit plan filers will be required to include the answers as an attachment to their Annual Return/Report. A new Part III will be included in the Form 5500 for the 2014 Form 5500 and later year Forms 5500. Elsewhere in this edition of the **Federal Register**, the Employee Benefits Security Administration is publishing the Final Rules amending the annual reporting regulations under ERISA sections 103 and 104 as part of the Final Rules on Filing Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities (Final Rules).

## III. Discussion of the Forms Revisions

As in the proposal, the final forms revisions make compliance with the Form M–1 filing requirements an integral part of compliance with ERISA's Form 5500 annual reporting requirements for plans required to file the Form M–1 by requiring all such plans to file a Form 5500 Annual Return/Report (with new Form M–1 compliance questions), regardless of the plan size or type of funding. The changes to the Form 5500 and its instructions, together with companion Final Rules amending the annual reporting regulations under ERISA section 103 and 104, being published separately in today's **Federal Register**, accomplish several interrelated objectives.

First, § 2520.103–1 is being amended to codify the addition of Form M–1 compliance questions to the Form 5500. As in the proposal, the Final Rules amend the content of the annual report under § 2520.103–1 by requiring all plans subject to the Form M–1

[1] The Form M–1 regulations require limited Form M–1 filing for certain group health plans that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA for collectively bargained plans. These entities are referred to as Entities Claiming Exception or ECEs.

[2] In the preamble to the 2000 interim final rule, the Department explained ''[a]n important reason for requiring these groups to file is that the administrator of a MEWA may incorrectly determine that it is a group health plan or that it is established or maintained pursuant to a collective bargaining agreement. A reporting requirement limited only to MEWAs that are not group health plans may not result in reporting by many such MEWAs, thus greatly reducing the value of the data collected.'' *See* 65 FR 7152, 7153 (Feb. 11, 2000).

[3] Pursuant to ERISA section 502(c)(5), a civil penalty of up to $1,100 (or higher amount if adjusted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended) a day may be assessed for each day a non-plan MEWA fails to file a complete Form M–1.

[4] Unlike plan MEWAs that are under a permanent requirement to file the Form M–1, 29 CFR 2520.101–2 requires an ECE to file the Form M–1 only during the three years following each origination event (an ECE may experience more than one origination event). Therefore, the Form 5500 rules relating to plans required to file the Form M–1 apply to ECEs only during the periods in which ECEs are required to file the Form M–1.

requirements to include as part of the Form 5500 Annual Return/Report ''[a]ny statements or information required by the instructions to the Form 5500 relating to information regarding compliance with the filing requirements under § 2520.101–2.'' The forms revisions being adopted in this Notice implement this requirement by adding a new Part III to the Form 5500, which asks for information regarding whether an employee welfare benefit plan is subject to the Form M–1 filing requirements during the plan year, and if so, whether the plan is currently in compliance with the Form M–1 filing requirements under § 2520.101–2. Plan administrators that indicate the plan is subject to the Form M–1 filing requirements must enter a Receipt Confirmation Code for the Form M–1 annual report or, if the plan was not required to file the Form M–1 annual report, the most recent Form M–1 required to be filed by the plan. This was adjusted slightly from the proposal to simplify the reporting requirement. The proposal asked for the Receipt Confirmation Code for the most recent Form M–1 including Form M–1 filings (e.g., origination or registration filings) made after the latest Form M–1 annual report. Failure to answer the Form M–1 compliance questions will subject the Form 5500 Annual Return/Report to rejection as incomplete and civil penalties may be assessed pursuant to ERISA section 502(c)(2). For the 2013 Form 5500 year, the Part III questions will be included in the Form 5500 instructions and welfare benefit plan filers will be required to include the answers to the new questions in a non-standard attachment. The new Part III will be included in the Form 5500 for the 2014 Form 5500 and later year Forms 5500.

Second, § 2520.104–20 is being amended to ensure that all plan MEWAs and ECEs regardless of size or funding are required to answer the new Form M–1 compliance questions on the Form 5500. Section 2520.104–20 now expressly provides that plans required to file the Form M–1 (plan MEWAs and ECEs) are not eligible for the exemption from filing a Form 5500 that applies to certain unfunded, fully insured, and combination unfunded/insured small welfare plans. That change is being reflected in the changes to the instructions for the Form 5500 being adopted in this Notice. Unless those plans are required to file the Form 5500 with the new Form M–1 compliance questions, the Department would continue to have no ERISA civil penalty process to enforce compliance of the Form M–1 filing obligations of small plan MEWAs and ECEs.

Third, § 2520.103–1(c)(2) is being amended to provide that plan MEWAs and ECEs are not eligible to file the short form, Form 5500–SF, because the Form 5500–SF does not include specific Schedule A insurance information questions, and the Department believes that plan MEWAs and ECEs that claim to provide insured benefits should be required to complete the Schedule A to report information about the insurance policy and insurance company. That change is being reflected in the changes to the instructions to the Form 5500 and Form 5500–SF being adopted in this Notice.

The burden of preparing and filing the Form 5500 Annual Return/Report for the few small plan MEWAs and ECEs that may be affected by this change would be minimized because, in addition to being eligible for the otherwise available simplified annual reporting requirements for small welfare plans provided under § 2520.104–41, plans that meet all of the requirements under § 2520.104–44 are exempt from certain financial reporting and audit requirements (e.g., completing Schedule I (Financial Information)).[5] Thus, many plan MEWAs and ECEs may only need to file a Form 5500 and, if applicable, Schedule A (Insurance Information) and Schedule G, Part III (to report any nonexempt transactions).

## IV. Findings on the Revised Form 5500 Annual Return/Report as a Limited Exemption and Simplified Reporting

Section 104(a)(2)(A) of ERISA authorizes the Secretary to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) of ERISA authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 of ERISA permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of Title I of ERISA, provides adequate disclosure to plan participants and beneficiaries, and provides adequate reporting to the Secretary; (2) the application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate. For purposes of Title I of ERISA, the filing of a completed Form 5500 Annual Return/Report, including the filing by eligible plans of the Form 5500–SF, in accordance with the instructions and related regulations, generally would constitute compliance with the simplified report, limited exemption and/or alternative method of compliance in § 2520.103–1. In addition, section 505 of ERISA authorizes the Secretary to prescribe such regulations as the Secretary finds necessary or appropriate to carry out the provisions of Title I of ERISA.

In revising the Form 5500 Annual Return/Report and making the amendments to the Department's annual reporting regulations, the Department has attempted to balance the needs of participants and beneficiaries and the Department to obtain information necessary to protect ERISA rights and interests with the costs attendant with the reporting of information to the federal government. The Department finds under sections 104(a)(2)(A) and 104(a)(3) of ERISA that the use of the Form 5500 Annual Return/Report, with the new Form M–1 compliance questions, is consistent with the purposes of Title I of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary.

Taking into account the above, the Department has determined that these revisions to the Form 5500 Annual Return/Report are necessary and appropriate to carry out the provisions of Title I of ERISA. The revised Form 5500 Annual Return/Report also continues to provide for the reporting and disclosure of financial and other plan information described in section 103 of ERISA in a uniform, efficient, and understandable manner, thereby facilitating the disclosure of such information to plan participants and beneficiaries.

## V. Paperwork Reduction Act Statement

According to the Paperwork Reduction Act of 1995 (Pub. L. 104–13)

[5] Neither this Notice nor the companion final regulations on ''Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities'' change the eligibility requirements for the limited exemption under 29 CFR 2520.104–44. The Department expects that many plan MEWAs and ECEs will not satisfy the unfunded and insured eligibility requirements in the limited exemption and will continue to be ineligible for the reporting relief under 29 CFR 2520.104–44.

(PRA), no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512.

The Department has filed a revision with OMB regarding the impact this Notice would have on the information collection request titled ''Form 5500, Annual Return/Report of Employee Benefit Plan,'' which was approved by OMB under OMB Control Number 1210–0110 and is currently scheduled to expire on March 31, 2014. The final regulation titled ''Filings Required of Multiple Employer Welfare Arrangements and Certain Other Related Entities,'' published elsewhere in today's issue of the **Federal Register**, revises the content of the Form 5500 to require an ERISA-covered plan that is subject to Form M–1 requirements to include ''[a]ny statements or information required by the instructions to the Form 5500 relating to information regarding compliance with the filing requirements under § 2520.101–2.'' Accordingly, the Department is finalizing a new Part III to the Form 5500, which asks for information regarding whether an employee welfare benefit plan is subject to the Form M–1 requirements during the plan year, and if so, whether the plan is currently in compliance with the Form M–1 requirements under § 2520.101–2. Plan administrators that indicate the plan is subject to the Form M–1 requirements also would be required to enter the Receipt Confirmation Code for the Form M–1 annual report or the most recent Form M–1 filing made with the Department. Failure to answer the Form M–1 compliance questions will subject the Form 5500 Annual Return/Report to rejection as incomplete and civil penalties may be assessed pursuant to ERISA section 502(c)(2). The Department believes that the burden associated with this revision would be *de minimis,* because plan administrators would know whether the plan is subject to and in compliance with the Form M–1 requirements and they would have the Receipt Confirmation Codes readily available.

The final rule also requires all plans subject to the Form M–1 requirements to file Form 5500, regardless of the plan size or type of funding. The limited exemption available for certain small welfare plans that meet the requirements of § 2520.104–20 is being amended to expressly state that plans subject to the Form M–1 requirements are not eligible for the exemption. In addition, such plans would not be eligible to file the Form 5500–SF. Although the Department does not have sufficient data to estimate the number of plan MEWAs and ECEs that may be affected by this revision, it expects the number to be small, because 90 percent of entities that file Form M–1 with the Department cover more than 100 participants. Moreover, the burden of preparing and filing the Form 5500 Annual Return/Report for the few small plans that might be affected by this rule would be minimal, because, in addition to being eligible for the simplified annual reporting requirements for small welfare plans provided under § 2520.104–41, small plans that meet the requirements of § 2520.104–44 are exempt from completing certain otherwise applicable financial reporting and audit requirements, such as completing the Schedule I (Financial Information). Thus, the affected plans may only need to file a Form 5500 and, if applicable, Schedule A and Schedule G, Part III (to report any nonexempt transactions). The Department estimates that affected plans would incur a cost of $450 to engage a third-party service provider to prepare the form and schedules for submission. Any burden for small ECEs is even less because these plans are subject to the Form M–1 filing requirements only for the three year period following any origination event.

**Appendix A—Changes to Existing Form 5500—A New Part III Is Added to the Form 5500 on Form M–1 Compliance**

For the 2013 Form 5500, the questions will be included in the Form 5500 instructions and welfare benefit plan filers will be required to include the answers as an attachment to their annual return/report. The new Part III will be included in the Form 5500 for the 2014 Form 5500 and later year Forms 5500.

| Part III | Form M-1 Compliance Information (to be completed by welfare benefit plans) |
|---|---|

**11a.** If the plan provides welfare benefits, was the plan subject to the Form M-1 filing requirements during the plan year? (*See* instructions and 29 CFR 2520.101-2.)
..... **X** Yes **X** No

**If "Yes" is checked, complete lines 11b and 11c.**

**11b.** Is the plan currently in compliance with the Form M-1 filing requirements? (*See* instructions and 29 CFR 2520.101-2.)
..... **X** Yes **X** No

**11c.** Enter the Receipt Confirmation Code for the 2013 Form M-1 annual report. If the plan was not required to file the 2013 Form M-1 annual report, enter the Receipt Confirmation Code for the most recent Form M-1 that was required to be filed under the Form M-1 filing requirements. (Failure to enter a valid Receipt Confirmation Code will subject the Form 5500 filing to rejection as incomplete.)

Receipt Confirmation Code_____

## Appendix B—Changes to Form 5500 Instructions

The changes to the instructions to the Form 5500 are as follows:

**Section 1: Who Must File**

• The following instructions will be added to the instructions for Welfare Benefit Plan:

Plans required to file a Form M–1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs),* are not eligible for the filing exemption in 29 CFR 2520.104–20 described below. Such plans are required to file the Form 5500 regardless of the plan size or type of funding.

**Section 4: What To File**

• The following instructions will be added to the instructions for General Schedules, Schedule I:

**Note.** A welfare plan that would have been eligible for the filing exemption under 29 CFR 2520.104–20 but for the fact that it is required to file a Form M–1 is exempt from completing a Schedule I if it meets the requirements of 29 CFR 2520.104–44(b)(1).

• The following tip will be added to the instructions for Small Welfare Plan filing requirements:

TIP *A welfare plan that covered fewer than 100 participants as of the beginning of the plan year and is required to file a* Form M-1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs*), is exempt from attaching Schedule I if the plan meets the requirements of 29 CFR 2520.104-44. However, Schedule G, Part III, must be attached to the Form 5500 to report any nonexempt transactions.*

**Quick Reference Chart of Form 5500, Schedules, and Attachments (Not Applicable for Form 5500–SF Filers)**

• The following sentence will be added at the end of footnote 3:

All Plans required to file Form M–1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs),* must file an annual report regardless of plan size or type of funding.

**Section 5: Line-by-Line Instructions for the Form 5500 and Schedules**

• The following instructions for new Part III will be added as follows:

**Part III—Form M–1 Compliance Information (to be completed by welfare benefit plans)**

Line 11a. All plans providing welfare benefits must complete Part III, line 11a by answering either ''Yes'' or ''No.'' Do not leave the answer blank. Check ''Yes'' and complete line 11, elements 11b and 11c if the plan is a multiple employer welfare arrangement or an Entity Claiming Exception (ECE) subject to the Form M–1 filing requirements. If the answer is ''No,'' skip elements 11b and 11c of line 11.

Generally, a Form M–1 annual report must be filed each year by March 1st following the calendar year in which a plan operates subject to the Form M–1 filing requirement. (For example, a plan MEWA that was operating in 2013 must file the 2013 Form M–1 annual report by March 1, 2014.) In addition, Form M–1 filings are necessary in the case of certain registration, origination, or special events. See the instructions for Form M–1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs), http://www.askebsa.dol/gov/mewa,* and 29 CFR 2520.101–2 for more information regarding the Form M–1 filing requirements for plan MEWAs and ECEs.

Line 11b. All plans that answered ''Yes'' in line 11a must complete line 11b by answering either ''Yes'' or ''No.'' Do not leave the answer blank.

Line 11c. All plans that answered ''Yes'' in line 11a must enter a Receipt Confirmation Code for the 2013 Form M–1 annual report that was required to be filed with the Department under the Form M–1 filing requirements. The Receipt Confirmation Code is a unique code generated by the Form M–1 electronic filing system. You can find this code under the ''completed filings'' area when you log into your Form M–1 electronic filing system at *http://www.askebsa.dol/gov/mewa.*

If a plan was not required to file a 2013 Form M–1 annual report, enter the Receipt Confirmation Code for the most recent Form M–1 that was required to be filed under the Form M–1 filing requirements on or before the date of filing the 2013 Form 5500. (For example, if a plan was not required to file a 2013 Form M–1 annual report by March 1, 2014 for the 2013 calendar year because it experienced a registration event between

October 1 and December 31, 2013, and made a timely Form M–1 registration filing, the plan must enter on line 11c of the 2013 Form 5500 the Receipt Confirmation Code issued for the Form M–1 registration filing.)

*A welfare benefit plan's failure to answer line 11a, and if applicable, line 11b and line 11c, or enter a valid Receipt Confirmation Code in line 11c, will subject the Form 5500 filing to rejection as incomplete and civil penalties may be assessed pursuant to ERISA Section 502(c)(2) and 29 CFR 2560.502c-2.*

**Instructions for Schedule G (Form 5500)**
***Financial Transaction Schedules***

• The following instructions will be added to the ''Caution'' paragraph in Part III—Nonexempt Transactions:

*A Plan that is required to file a Form M–1, Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs), but that is not required to file the Schedule I because it has fewer than 100 participants and meets the requirements of 29 CFR 2520.104–44, must complete Schedule G, Part III, to report nonexempt transactions.*

**Instructions for Schedule I (Form 5500)**
***Financial Information—Small Plan***

• The following instructions will be added to the ''Exception'' paragraph under General Instructions for Who Must File:

A Plan that is required to file a Form M–1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs)* is not required to file the Schedule I if it has fewer than 100 participants at the beginning of the plan year and meets the requirements of 29 CFR 2520.104–44.

## Appendix C—Changes to Existing Form 5500–SF Instructions

**General Changes**

The instructions to the Form 5500–SF will be updated to clarify that plans subject to the Form M–1 filing requirements (plan MEWAs and Entities Claiming Exception) are not eligible to file the Form 5500–SF and must file the Form 5500, with all required schedules and attachments. The changes are as follows:

**Who May File**

• The following paragraph 6 will be added to the instructions:

6. The plan is not required to file a Form M–1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) during the plan year.*

**Specific Line-by-Line Instructions (Form 5500–SF)**

• The following paragraph 6 will be added to the instructions for Part II, Line 6:

6. The plan is not required to file a Form M–1, *Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) during the plan year.*

Signed at Washington, DC, this 26th day of February 2013.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

[FR Doc. 2013–04864 Filed 2–28–13; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Availability of Funds and Solicitation for Grant Applications for Intermediary Organizations Serving Juvenile Offenders in High-Poverty, High-Crime Communities

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of Solicitation for Grant Applications (SGA).

*Funding Opportunity Number:* SGA/DFA PY–12–03.

**SUMMARY:** The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of $20 million in grant funds authorized by the Workforce Investment Act for grants to intermediary organizations to operate multi-site projects to serve juvenile offenders and in-school youth at-risk of involvement in the juvenile justice system, ages 14 and above, in high-poverty, high-crime communities.

Intermediary Organizations Serving Juvenile Offenders in High-Poverty, High-Communities grants will be awarded through a competitive process. Under this solicitation, DOL expects to award, four grants of $5 million each to cover a 39-month period of performance. These grants will include a combination of workforce development, education and training, case management, mentoring, restorative justice, community-wide violence reduction components, and post program support and follow-up.

The complete SGA and any subsequent SGA amendments in connection with this solicitation are described in further detail on ETA's Web site at *http://www.doleta.gov/grants/* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures, and other program requirements governing this solicitation.

**DATES:** The closing date for receipt of applications under this announcement is April 15, 2013. Applications must be received no later than 4:00:00 p.m. Eastern Time.

**FOR FURTHER INFORMATION CONTACT:** Brinda Ruggles, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210; Telephone: 202–693–3437.

Signed: February 25, 2013, in Washington, DC.

**Eric D. Luetkenhaus,**

*Grant Officer, Employment and Training Administration.*

[FR Doc. 2013–04792 Filed 2–28–13; 8:45 am]

**BILLING CODE 4510–FT–P**

## MILLENNIUM CHALLENGE CORPORATION

**[MCC FR 13–01]**

### Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meetings

**AGENCY:** Millennium Challenge Corporation.

**TIME AND DATE:** 10:00 a.m. to Noon, Thursday, March 14, 2013.

**PLACE:** Department of State, 2201 C Street NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Information on the meeting may be obtained from Melvin F. Williams, Jr., Vice President, General Counsel and Corporate Secretary via email at *corporatesecretary@mcc.gov* or by telephone at (202) 521–3600.

**STATUS:** Meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting to discuss the Honduras Threshold Program and the Suspension and Termination Policy.

The agenda items are expected to involve the consideration of classified information and the meeting will be closed to the public.

Dated: February 27, 2013.

**Melvin F. Williams, Jr.,**

*VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.*

[FR Doc. 2013–04908 Filed 2–27–13; 4:15 pm]

**BILLING CODE 9211–03–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–021]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Availability of Inventions for Licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No.: MFS–32099–1–CON: Composite Pressure Vessel Including Crack Arresting Barrier;

NASA Case No.: MFS 32761–1–CIP: Eddy Current Minimizing Flow Plug for Use in Flow Conditioning and Flow Metering.

**Sumara M. Thompson-King,**

*Deputy General Counsel.*

[FR Doc. 2013–04806 Filed 2–28–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–016]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Earp, III, Patent Attorney, Glenn Research Center at Lewis Field, Code 21–14, Cleveland, OH 44135; telephone (216) 433–5754; fax (216) 433–6790.

NASA Case No.: LEW–18516–1: Hybrid Gear;

NASA Case No.: LEW–18821–1: Dopant Selective Reactive Ion Etching of Silicon Carbide;

NASA Case No.: LEW–18674–1: Polymer Electrolyte-Based Sensors;

NASA Case No.: LEW–18809–1: Sampling and Control Circuit Board for an Inertial Measurement Unit;

NASA Case No.: LEW–18732–1: System, Apparatus, and Method for Liquid Purification.

**Sumara M. Thompson-King,**

*Deputy General Counsel.*

[FR Doc. 2013–04800 Filed 2–28–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–018]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Availability of Inventions for Licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No.: DRC–012–011–1: Air Launch from a Towed Aircraft.

**Sumara M. Thompson-King,**

*Deputy General Counsel.*

[FR Doc. 2013–04803 Filed 2–28–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–020]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Robin W. Edwards, Patent Counsel, Langley Research Center, Mail Stop 30, Hampton, VA 23681–2199; telephone (757) 864–3230; fax (757) 864–9190.

NASA Case No.: LAR–17211–1: Floating Ultrasonic Transducer Inspection System and Method for Nondestructive Evaluation;

NASA Case No.: LAR–17801–1: Coherent Doppler Lidar for Measuring Altitude, Ground Velocity, and Air Velocity of Aircraft and Spaceborne Vehicles;

NASA Case No.: LAR–18097–1: Shape Sensing Using a Multi-Core Optical Fiber Having an Arbitrary Initial Shape in the Presence of Extrinsic Forces;

NASA Case No.: LAR–18077–1: Method and Apparatus for Generating Flight-Optimizing Trajectories.

**Sumara M. Thompson-King,**

*Deputy General Counsel.*

[FR Doc. 2013–04805 Filed 2–28–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–017]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Availability of Inventions for Licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No.: GSC–16193–1: Fine Control and Maintenance Algorithm for Visible Nulling Coronagraphy.

**Sumara M. Thompson-King,**

*Deputy General Counsel.*

[FR Doc. 2013–04802 Filed 2–28–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–015]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Availability of Inventions for Licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No.: ARC–16811–1: Compliant Electrode and Composite Material for Piezoelectric Wind and Mechanical Energy Conversions;

NASA Case No.: ARC–16467–1: System and Method for Outlier Detection via Estimating Clusters.

**Sumara M. Thompson-King,**

*Deputy General Counsel.*

[FR Doc. 2013–04801 Filed 2–28–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 13–019]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Availability of Inventions for Licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Randy Heald, Patent Counsel, Kennedy Space Center, Mail Code CC–A, Kennedy Space Center, FL 32899; telephone (321) 867–7214; fax (321) 867–1817.

NASA Case No.: KSC–13592: pH-Sensitive Microparticles with Matrix-Dispersed Active Agent;

NASA Case No.: KSC–13636: Incorporation of Chemochromic Pigment into a Variety of Articles as an Indicator for the Presence of Hypergolic Fuels;

NASA Case No.: KSC–13088–CON: Chemochromic Detector for Sensing Gas

NASA Case No.: KSC–13088–CON: Chemochromic Detector for Sensing Gas Leakage and Process for Producing Same;

NASA Case No.: KSC–13088–DIV: Chemochromic Detector for Sensing Gas Leakage and Process for Producing Same.

**Sumara M. Thompson-King,**

*Deputy General Counsel.*

[FR Doc. 2013–04804 Filed 2–28–13; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Office of the Federal Register

### Agreements in Force as of December 31, 2012 Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States

**AGENCY:** Office of the Federal Register, NARA.

**ACTION:** Notice of availability of agreements.

**SUMMARY:** The American Institute in Taiwan has concluded a number of agreements with the Taipei Economic and Cultural Representative Office in the United States (formerly the Coordination Council for North American Affairs) in order to maintain cultural, commercial and other unofficial relations between the American people and the people of Taiwan. The Director of the Federal Register is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

**SUPPLEMENTARY INFORMATION:** Cultural, commercial and other unofficial relations between the American people and the people of Taiwan are maintained on a non-governmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96–8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) was established as the nongovernmental Taiwan counterpart to AIT. On October 10, 1995, the CCNAA was renamed the Taipei Economic and Cultural Representative Office in the United States (TECRO).

Under section 12 of the Act, agreements concluded between AIT and TECRO (CCNAA) are transmitted to the Congress, and according to sections 6 and 10(a) of the Act, such agreements have full force and effect under the law of the United States. The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, Suite 1700, Arlington, Virginia 22209. For further information, please telephone (703) 525–8474, or fax (703) 841–1385.

Following is a list of agreements between AIT and TECRO (CCNAA) which were in force as of December 31, 2012.

For the American Institute in Taiwan.

Dated: February 19, 2013.

**Barbara J. Schrage,**

*Managing Director For the Office of the Federal Register.*

Dated: February 25, 2013.

**Charles Barth,**

*Director.*

**Agreements Between American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) In Force as of December 31, 2012**

**Status of Tecro**

The Exchange of Letters concerning the change in the name of the Coordination Council for North American Affairs (CCNAA) to the Taipei Economic and Cultural Representative Office in the United States (TECRO). Signed December 27, 1994 and January 3, 1995. Entered into force January 3, 1995.

**Agriculture**

1. Guidelines for a cooperative program in the agriculture sciences. Signed January 28, 1986. Entered into force January 28, 1986.

2. Amendment amending the 1986 Guidelines for a Cooperative Program in the Agricultural Sciences. Effected by exchange of letters September 11, 1989. Entered into force September 11, 1989.

3. Cooperative service agreement to facilitate fruit and vegetable inspection through their designated representatives, the United States Department of Agriculture Animal and Plant Health Inspection Service (APHIS) and the Taiwan Provincial Fruit

Marketing Cooperative (TPFMC) supervised by the Taiwan Council of Agriculture (COA). Signed April 28, 1993. Entered into force April 28, 1993.

4. Memorandum of agreement concerning sanitary/phytosanitary and agricultural standards. Signed November 4, 1993. Entered into force November 4, 1993.

5. Agreement amending the guidelines for the cooperative program in agricultural sciences. Signed October 30, 2001. Entered into force October 30, 2001.

6. Memorandum of Understanding Establishing Consultative Committee on Agriculture Terms of Reference. Signed July 10, 2007. Entered into force July 10, 2007.

7. Consultative Committee on Agriculture Terms of Reference. Signed July 10, 2007. Entered into force July 10, 2007.

8. Notification on Protocol of Bovine Spongiform Encephalopathy (BSE)—related measures for the importation of beef and beef products for human consumption from territory of the authorities represented by AIT. Signed October 22, 2009. Entered into force October 22, 2009.

**Aviation**

1. Memorandum of agreement concerning the arrangement for certain aeronautical equipment and services relating to civil aviation (NAT–I–845), with annexes. Signed September 24 and October 23, 1981. Entered into force October 23, 1981.

2. Amendment amending the memorandum of agreement concerning aeronautical equipment and services of September 24 and October 23, 1981. Signed September 1 and 23, 1985. Entered into force September 3, 1985.

3. Agreement amending the memorandum of agreement of September 24 and October 23, 1981, concerning aeronautical equipment and services. Signed September 23 and October 17, 1991. Entered into force October 17, 1991.

4. Air transport agreement, with annexes. Signed at Washington March 18, 1998. Entered into force March 18, 1998.

5. Agreement for promotion of aviation safety. Signed June 30, 2003. Entered into force June 30, 2003.

6. Exchange of Letters concerning removal from the agreement of provisions relating to regulations of computer reservation systems in Annex III to the Air Transport Agreement signed March 18, 1998. Signed December 11, 2006 and January 2, 2007. Entered into force January 2, 2007.

7. Exchange of Letters on Principles for Cooperation on Improving Travel Security. Signed December 19, 2008. Enter into force December 19, 2008.

8. Agreement for Cooperation in and the promotion of Transportation of Safety. Signed June 15, 2010 and June 22, 2010. Entered into force June 22, 2010.

9. Memorandum of Agreement NAT–I–2305 between AIT and TECRO. Signed May 16, 2012 and February 21, 2012. Entered into force May 16, 2012.

**Conservation**

1. Memorandum on cooperation in forestry and natural resources conservation. Signed May 23 and July 4, 1991. Entered into force July 4, 1991.

2. Memorandum on cooperation in soil and water conservation under the guidelines for a cooperative program in the agricultural sciences. Signed at Washington October 5, 1992. Entered into force October 5, 1992.

3. Agreement on technical cooperation in forest management and nature conservation. Signed October 24, 2003 and February 27, 2004. Entered into force February 27, 2004.

4. Memorandum of Understanding Concerning Cooperation in Fisheries and Aquaculture. Signed April 21, 2008. Entered into force April 21, 2008

**Consular**

1. Agreement regarding passport validity. Effected by exchange of letters of August 26 and November 13, 1998. Entered into force December 10, 1998.

**Consumer Product Safety**

1. Memorandum of Understanding for cooperation associated with consumer product safety matters. Signed April 29 and July 27, 2004. Entered into force July 27, 2004.

**Customs**

1. Agreement for technical assistance in customs operations and management, with attachment. Signed May 14 and June 4, 1991. Entered into force June 4, 1991.

2. Agreement on TECRO/AIT carnet for the temporary admission of goods. Signed June 25, 1996. Entered into force June 25, 1996.

3. Agreement regarding mutual assistance between their designated representatives, the United States Customs Administration and the Taiwan Customs Administration. Signed January 17, 2001. Entered into force January 17, 2001.

**Drug Enforcement**

1. Memorandum of Understanding Concerning the Sharing of Information in Relation to Preventing Combating Breach of Customs and Controlled Substances Laws. Signed February 10, 2009. Entered into force February 10, 2009.

**Education and Culture**

1. Agreement amending the agreement for financing certain educational and cultural exchange programs of April 23, 1964. Effected by exchange of letters at Taipei April 14 and June 4, 1979. Entered into force June 4, 1979.

2. Agreement concerning the Taipei American School, with annex. Signed at Taipei February 3, 1983. Entered into force February 3, 1983.

3. Memorandum of Understanding on Educational Cooperation. Signed at Washington DC December 5, 2008. Entered into force December 5, 2008.

4. Exchange of letters concerning the Foundation for Scholarly Exchange pursuant to the Agreement for financing certain educational and cultural exchange programs. Signed December 4, 2009 and April 15, 2010. Entered into force April 15, 2010.

**Energy**

1. Agreement relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed at Taipei October 3, 1984. Entered into force October 3, 1984.

2. Agreement amending and extending the agreement of October 3, 1984, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 19, 1989. Entered into force October 19, 1989.

3. Agreement abandoning in place in Taiwan the Argonaut Research Reactor loaned to National Tsing Hua University. Signed November 28, 1990.

4. Agreement Amending and Extending the Agreement of October 3, 1984, as amended and extended, relating to the establishment of a joint standing committee on civil nuclear cooperation. Signed October 3, 1994. Entered into force October 3, 1994.

5. Agreement concerning safeguards arrangements for nuclear materials transferred from France to Taiwan. Effected by exchange of letters February 12 and May 13, 1993. Entered into force May 13, 1993.

6. Memorandum of Agreement for release of an Energy and Power Evaluation Program (ENPEP) computer software package. Signed January 25 and February 27, 1995. Entered into force February 27, 1995.

7. Agreement regarding terms and conditions for the acceptance of foreign research reactor spent nuclear fuel at the Department of Energy's Savannah River

site. Signed December 28, 1998 and February 25, 1999. Entered into force February 25, 1999.

8. Agreement for technical cooperation in clean coal and advanced power systems technologies. Signed October 31, 2003 and January 20, 2004. Entered into force January 20, 2004.

9. Modification Number 1 to the Agreement for the Shipment of Spent Nuclear Fuel. Signed July 8, 2009. Entered into force July 8, 2009.

10. Arrangement for the Exchange of Technical Information and Cooperation in Nuclear Regulatory and Safety Matters. Signed January 4, 2011 and January 4, 2011. Entered into force January 04, 2011.

11. Statement of Intent regarding Nuclear and Radiological Incident Response and Emergency Management Capabilities. Signed May 9, 2011 and May 26, 2011. Entered into force May 26, 2011.

12. Joint Determination of Safeguardability for Alteration in Form or Content of Irradiated Fuel elements. Signed June 20, 2011 and June 20, 2011. Entered into force June 20, 2011.

**Environment**

1. Agreement for technical cooperation in the field of environmental protection, with implementing arrangement. Signed June 21, 1993. Entered into force June 21, 1993.

2. Agreement extending the agreement of June 21, 1993 for technical cooperation in the field of environmental protection. Effected by exchanges of letters June 30 and July 20 and 30, 1998. Entered into force July 30, 1998, effective June 21, 1998.

3. Agreement extending the agreement for technical cooperation in the field of environmental protection. Signed September 23, 2003. Entered into force September 23, 2003.

4. Extension of Agreement for the Technical Cooperation in the Field of Environmental Protection. Signed September 29, 2008. Entered into force September 29, 2008.

5. Letter of confirmation of compatible Good Laboratory Practices programs. Signed January 19, 2010 and February 3, 2010. Entered into force February 3, 2010.

**Health**

1. Guidelines for a cooperative program in the biomedical sciences. Signed May 21, 1984. Entered into force May 21, 1984.

2. Guidelines for a cooperative program in food hygiene. Signed January 15 and 28, 1985. Entered into force January 28, 1985.

3. Agreement amending the 1984 guidelines for a cooperative program in the biomedical sciences, with attachment. Signed April 20, 1989. Entered into force April 20, 1989.

4. Agreement amending the 1984 guidelines for a cooperative program in the biomedical Sciences, as amended, with attachment. Signed August 24, 1989. Entered into force August 24, 1989.

5. Guidelines for a cooperative program in public health and preventive medicine. Signed at Arlington and Washington June 30 and July 19, 1994. Entered into force July 19, 1994.

6. Agreement for technical cooperation in vaccine and immunization-related activities, with implementing arrangement. Signed at Washington October 6 and 7, 1994. Entered into force October 7, 1994.

7. Agreement regarding the mutual exchange of information on medical devices, including quality systems requirements inspectional information. Effected by exchange of letters January 9, 1998. Entered into force January 9, 1998.

**Homeland Security**

1. Declaration of Principles for governing cooperation, on the basis of reciprocity, including the posting of AIT Representatives at the Port of Kaohsiung, and the posting of TECRO Representatives at certain U.S. seaports. Signed August 18, 2004. Entered into force August 18, 2004.

2. Memorandum of understanding concerning cooperation to prevent the illicit trafficking in nuclear and other radioactive material. Signed May 25, 2006. Entered into force May 25, 2006.

3. Declaration of Principles for governing cooperation, on the basis of reciprocity, including the posting of AIT Representatives at seaports in Taiwan. Signed September 22, 2006. Entered into force September 22, 2006.

4. Exchange of Letters to facilitate the implementation of the MOU concerning cooperation to prevent the illicit trafficking in nuclear and other radioactive material signed May 25, 2006. Signed April 30, 2007 and July 5, 2007. Entered into force July 5, 2007.

5. Port Air Quality Partnership Declaration on the occasion of a Port Air Quality Partnership Conference hosted by their designated representatives, the Port of Tacoma, Washington and the Harbor Bureaus of Kaosiung, Taipei and Keelung on November 18–20, 2008. Signed November 20, 2008. Entered into force November 20, 2008.

6. Agreement for Transfer of Ownership. Signed September 30, 2009. Entered into force September 30, 2009.

7. Joint Statement between AIT and TECRO for Cooperation on Repatriation of Persons Bearing Taiwan Passports. Signed September 25, 2012. Entered into force September 25, 2012.

8. Arrangement between AIT and TECRO Regarding Mutual Recognition of the Supply Chain Security Programs of their Designated Representatives: U.S. DHS Through U.S. Customs and Border Protection and Directorate General of Customs Taiwan Ministry of Finance. Signed November 26, 2012. Entered into force November 26, 2012.

**Intellectual Property**

1. Agreement concerning the protection and enforcement of rights in audiovisual works. Effected by exchange of letters at Arlington and Washington June 6 and 27, 1989. Entered into force June 27, 1989.

2. Understanding concerning the protection of intellectual property rights. Signed at Washington June 5, 1992. Entered into force June 5, 1992.

3. Agreement for the protection of copyrights, with appendix. Signed July 16, 1993. Entered into force July 16, 1993.

4. Memorandum of understanding regarding the extension of priority filing rights for patent and trademark applications. Signed April 10, 1996. Entered into force April 10, 1996.

**Judicial Assistance**

1. Memorandum of understanding on cooperation in the field of criminal investigations and prosecutions. Signed at Taipei October 5, 1992. Entered into force October 5, 1992.

2. Agreement on mutual legal assistance in criminal matters. Signed March 26, 2002. Entered into force March 26, 2002.

**Labor**

1. Guidelines for a cooperative program in labor affairs. Signed December 6, 1991. Entered into force December 6, 1991.

2. Agreement for a cooperative program in Labor Mediation and Alternative Dispute Resolution. Signed June 23, 2010 and July 7, 2010. Entered into force July 7, 2010.

**Mapping**

1. Agreement concerning mapping, charting, and geodesy cooperation. Signed November 28, 1995. Entered into force November 28, 1995.

2. Amendment one to the Agreement concerning mapping, charting, and geodesy cooperation. Signed December 1, 2009. Entered into force December 1, 2009.

**Maritime**

1. Agreement concerning mutual implementation of the 1974 Convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington August 17 and September 7, 1982. Entered into force September 7, 1982.

2. Agreement concerning mutual implementation of the 1969 international convention on tonnage measurement. Effected by exchange of letters at Arlington and Washington May 13 and 26, 1983. Entered into force May 26, 1983.

3. Agreement concerning mutual implementation of the protocol of 1978 relating to the 1974 international convention for the safety of life at sea. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

4. Agreement concerning mutual implementation of the protocol of 1978 relating to the international convention for the prevention of pollution from ships, 1973. Effected by exchange of letters at Arlington and Washington January 22 and 31, 1985. Entered into force January 31, 1985.

5. Agreement concerning mutual implementation of the 1966 international convention on load lines. Effected by exchange of letters at Arlington and Washington March 26 and April 10, 1985. Entered into force April 10, 1985.

6. Agreement concerning the operating environment for ocean carriers. Effected by exchange of letters at Washington and Arlington October 25 and 27, 1989. Entered into force October 27, 1989.

**Military**

1. Agreement for foreign military sales financing by the authorities on Taiwan. Signed January 4 and July 12, 1999. Entered into force July 12, 1999.

2. Letter of Agreement concerning exchange of research and development information. Signed August 4, 2004. Entered into force August 4, 2004.

3. Master Information Exchange Agreement Information Exchange Annex AF–05–TW–9301 concerning Nanoscience and Nanotechnology. Signed December 15, 2005. Entered into force December 15, 2005.

4. Information and communication technologies (ICT) forum terms of reference. Signed October 31, 2007. Entered into force October 31, 2007.

5. Memorandum of Agreement Concerning Research, Development, Test and Evaluation (RDT&E) Projects. Signed May 14, 2008. Entered into force May 14, 2008.

6. Arrangement Concerning the Exchange of Aeronautical Information. Signed January 27, 2009. Entered into force January 27, 2009.

7. Information Exchange Annex N–11–TW–6551 Master Information Exchange Letter of Agreement. Signed May 25, 2011. Entered into force May 25, 2011.

8. Information Exchange Annex N–12–TW–6550 Master Information Exchange Letter of Agreement between AIT and TECRO concerning Meteorological and Oceanographic Information and Techniques. Signed January 31, 2012. Entered into force January 31, 2012.

**Postal**

1. Agreement concerning establishment of INTELPOST service. Effected by exchange of letters at Arlington and Washington April 19 and November 26, 1990. Entered into force November 26, 1990.

2. International business reply service agreement, with detailed regulations. Signed February 7, 1992. Entered into force February 7, 1992.

3. Agreement on the application of an EMS (express mail service) pay-for-performance plan. Signed March 5, 2004 and August 25, 2004. Entered into force January 1, 2005.

**Privileges and Immunities**

1. Agreement on privileges, exemptions and immunities, with addendum. Signed at Washington October 2. Entered into force October 2, 1980.

2. Agreement governing the use and disposal of vehicles imported by the American Institute in Taiwan and its personnel. Signed at Taipei April 21, 1986. Entered into force April 21, 1986.

**Scientific & Technical Cooperation**

1. Agreement on scientific cooperation. Effected by exchange of letters at Arlington and Washington on September 4, 1980. Entered into force September 4, 1980.

2. Agreement concerning renewal and extension of the 1980 agreement on scientific cooperation. Signed March 10, 1987. Entered into force March 10, 1987.

3. Guidelines for a cooperative program in atmospheric research. Signed May 4, 1987. Entered into force May 4, 1987.

4. Agreement for technical assistance in dam design and construction, with appendices. Signed August 24, 1987. Entered into force August 24, 1987.

5. Agreement for a cooperative program in the sale and exchange of technical, scientific, and engineering information. Signed November 17, 1987. Entered into force November 17, 1987.

6. Agreement extending the agreement of November 17, 1987, for a cooperative program in the sale and exchange of technical, scientific and engineering information. Signed August 8, 1990. Entered into force August 8, 1990.

7. Cooperative program on Hualien soil-structure interaction experiment. Signed September 28, 1990. Entered into force September 28, 1990.

8. Agreement for technical cooperation in geodetic research and use of advanced geodetic technology, with implementing arrangement. Signed January 11 and February 21, 1991. Entered into force February 21, 1991.

9. Agreement amending and extending the agreement of August 24, 1987, for technical assistance in dam design and construction. *Name changed to Agreement for Technical Assistance in Areas of Water Resource Development. Signed May 11 and June 9, 1992. Entered into force June 9, 1992.

10. Agreement for technical cooperation in seismology and earthquake monitoring systems development, with implementing arrangement. Signed July 22 and 24, 1992. Entered into force July 24, 1992.

11. Agreement amending the Agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed August 30 and September 3, 1996. Entered into force September 3, 1996.

12. Agreement concerning joint studies on reservoir sedimentation and sluicing, including computer modeling. Signed February 14 and March 8, 1996. Entered into force March 8, 1996.

13. Guidelines for a cooperative program in physical sciences. Signed January 2 and 10, 1997. Entered into force January 10, 1997.

14. Agreement for scientific and technical cooperation in ocean climate research. Signed February 18, 1997. Entered into force February 18, 1997.

15. Agreement amending the agreement of August 24, 1987 for technical assistance in areas of water resource development. Signed October 14, 1997. Entered into force October 14, 1997.

16. Agreement for technical cooperation in scientific and weather technology systems support. Signed October 22 and November 5, 1997. Entered into force November 5, 1997.

17. Agreement for technical cooperation associated with establishment of advanced operational aviation weather systems. Signed February 10 and 13, 1998. Entered into force February 13, 1998.

18. Agreement for technical cooperation associated with development, launch and operation of a

constellation observing system for meteorology, ionosphere and climate. Signed May 29 and June 30, 1999. Entered into force June 30, 1999.

19. Agreement for technical cooperation associated with establishment of advanced data assimilation and modeling systems. Signed December 20, 2004 and January 12, 2005. Entered into force January 12, 2005.

20. Agreement for cooperation in the micro pulse lidar network and the aerosol robotic network. Signed July 13, 2007 and April 17, 2007. Entered into force July 13, 2007.

21. Agreement for technical cooperation in meteorology and forecast systems development. Signed September 5, 2007 and June 25, 2007. Entered into force September 5, 2007.

22. Agreement for Cooperation in Astronomy and Astrophysics Research. Signed October 27, 2008. Entered into force October 27, 2008.

23. Agreement for Technical Cooperation associated with Development, Launch and Operation of a Constellation Observing System for Meteorology, Ionosphere and Climate Follow-on Mission. Signed May 10, 2010 and May 27, 2010. Entered into force May 27, 2010.

24. Agreement between AIT–TECRO for Technical Cooperation in Meteorology and Forecast Systems Development. Signed March 6, 2012 and December 1, 2011. Entered into force March 6, 2012.

25. Amendment #6 to the Agreement between AIT and TECRO for Technical Assistance in Areas of Water Resource Development. Signed May 7, 2012 and February 9, 2012. Entered into force May 7, 2012

26. Amendment #2 to Appendix #8 to the Agreement between AIT and TECRO for Technical Assistance in Areas of Water Resource Development. Signed May 29, 2012 and May 24, 2012. Entered into force May 29, 2012.

**Security of Information**

1. Protection of information agreement. Signed September 15, 1981. Entered into force September 15, 1981.

**Taxation**

1. Agreement concerning the reciprocal exemption from income tax of income derived from the international operation of ships and aircraft. Effected by exchange of letters at Taipei May 31, 1988. Entered into force May 31, 1988.

2. Agreement for technical assistance in tax administration, with appendices. Signed August 1, 1989. Entered into force August 1, 1989.

**Trade**

1. Agreement concerning trade matters, with annexes. Effected by exchange of letters at Arlington and Washington October 24, 1979. Entered into force October 24, 1979; effective January 1, 1980.

2. Agreement concerning trade matters. Effected by exchange of letters at Arlington and Washington December 31, 1981. Entered into force December 31, 1981.

3. Agreement concerning measures that the CCNAA will undertake in connection with implementation of the GATT Customs Valuation Code. Effected by exchange of letters at Bethesda and Arlington August 22, 1986. Entered into force August 22, 1986.

4. Agreement concerning the export performance requirement affecting investment in the automotive sector. Effected by exchange of letters at Washington and Arlington October 9, 1986. Entered into force October 9, 1986.

5. Agreement concerning beer, wine and cigarettes. Signed at Washington December 12, 1986. Entered into force December 12, 1986, effective January 1, 1987.

6. Agreement implementing the agreement of December 12, 1986 concerning beer, wine and cigarettes. Effected by exchange of letters at Taipei April 29, 1987. Entered into force April 29, 1987, effective January 1, 1987.

7. Agreement concerning trade in whole turkeys, turkey parts, processed turkey products and whole ducks, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington March 16, 1989. Entered into force March 16, 1989.

8. Agreement concerning the protection of trade in strategic commodities and technical data, with memorandum of understanding. Effected by exchange of letters at Arlington and Washington December 4, 1990 and April 8, 1991. Entered into force April 8, 1991.

9. Administrative arrangement concerning the textile visa system. Effected by exchange of letters at Arlington and Washington April 18 and May 1, 1991. Entered into force May 1, 1991.

10. Agreement regarding new requirements for health warning legends on cigarettes sold in the territory represented by CCNAA. Effected by exchange of letters at Washington and Arlington October 7 and 16, 1991. Entered into force October 16, 1991.

11. Memorandum of understanding concerning a new quota arrangement for cotton and man-made fiber trousers. Signed at Washington December 18, 1992. Entered into force December 18, 1992.

12. Memorandum of understanding on the exchange of information concerning commodity futures and options matters, with appendix. Signed January 11, 1993. Entered into force January 11, 1993.

13. Agreement concerning a framework of principles and procedures for consultations regarding trade and investment, with annex. Signed at Washington September 19, 1994. Entered into force September 19, 1994.

14. Visa arrangement concerning textiles and textile products. Effected by exchange of letters of April 30 and September 3 and 23 1997. Entered into force September 23, 1997.

15. Agreement concerning trade in cotton, wool, man-made fiber, silk blend and other non-cotton vegetable fiber textile products, with attachment. Effected by exchange of letters December 10, 1997. Entered into force December 10, 1997, effective January 1, 1998.

16. Agreed minutes on government procurement issues. Signed December 17, 1997. Entered into force December 17, 1997.

17. Understanding concerning bilateral negotiations on the WTO accession of the separate customs territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei) and the United States. Signed February 20, 1998. Entered into force February 20, 1998.

18. Agreement on mutual recognition for equipment subject to electro-magnetic compatibility (EMC) regulations. Signed March 16, 1999. Entered into force March 16, 1999.

19. Agreement concerning the Asia Pacific Economic Cooperation mutual recognition arrangement for conformity assessment of telecommunications equipment (APEC Telecon MRA). Signed March 16, 1999. Entered into force March 16, 1999.

20. Memorandum of understanding on the extension of trade in textile and apparel products. Signed February 9, 2001. Entered into force February 9, 2001.

21. Joint Arrangement for Sharing of Information Exchanged in Confidence. Signed September 7, 2010. Entered into force September 7, 2010.

[FR Doc. 2013–04515 Filed 2–28–13; 8:45 am]

**BILLING CODE 4710–49–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2013–0041]**

## Proposed Revision to Design of Structures, Components, Equipment and Systems

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Standard review plan-draft section revision; request for comment and use.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is revising the following sections in Chapter 3, ''Design of Structures, Components, Equipment, and Systems'' and is soliciting public comment on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 3.7.1, ''Seismic Design Parameters,'' Section 3.7.2, ''Seismic System Analysis,'' Section 3.7.3, ''Seismic Subsystem Analysis,'' Section 3.8.1, ''Concrete Containment,'' Section 3.8.3, ''Concrete And Steel Internal Structures of Steel Or Concrete Containments, ''Section 3.8.4, ''Other Seismic Category I Structures,'' and Section 3.8.5, ''Foundations.''

**DATES:** Submit comments by April 1, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0041. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0041. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy E. Cubbage, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2875, email: *Amy.Cubbage@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2013–0041 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0041.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS Accession numbers for redline documents comparing current revisions and the proposed revisions of individual sections are available in ADAMS under Accession Nos.: Section 3.7.1, Proposed Revision 4 (ML12352A305), Current Revision 3 (ML070640306), Redline (ML12354A050); Section 3.7.2, Proposed Revision 4 (ML12353A354) Current Revision 3 (ML070640311), Redline (ML12354A053); Section 3.7.3, Proposed Revision 4 (ML12353A357), Current Revision 3 (ML070640313), Redline (ML12354A043); Section 3.8.1, Proposed Revision 4 (ML12353A365), Current Revision 3 (ML100620888), Redline (ML12354A052); Section 3.8.3, Proposed Revision 4 (MLML12353A377), Current Revision 3 (ML100620981), Redline (ML12354A089); and Section 3.8.4, Proposed Revision 4 (ML12353A382), Current Revision 3 (ML100630323), Redline (ML12354A092); Section 3.8.5, Proposed Revision 4 (ML12353A388), Current Revision 3 (ML100621093), Redline (ML12354A096).
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2013–0041 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Further Information

The Office of New Reactors and Office of Nuclear Reactor Regulation are revising these sections from the current versions. In respect of these revisions, details of specific changes are included in the end of each of the revised sections themselves and are shown in the description of changes.

The changes to this Standard Review Plan (SRP) Chapter reflect current staff review methods and practices based on lessons learned from NRC reviews of design certification and combined license applications completed since the last revision of this chapter. Changes include: (1) Enhancements to guidance to the staff for evaluating the acceptability of the seismic and civil structural design and analysis issues, (2) updates to review interfaces to improve the efficiency and consistency of staff reviews and (3) updates to references covered in SRP Chapter 3.

The NRC staff is issuing this notice to solicit public comments on the proposed SRP Sections in Chapter 3. After the NRC staff considers any public comments, it will make a determination regarding the proposed SRP Sections in Chapter 3.

Dated at Rockville, Maryland, this 14th day of February 2012.

For the Nuclear Regulatory Commission.

Amy E. Cubbage,

*Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.*

ADAMS Accession No.: ML12352A297—*Concurrence via email—ADM–012.

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|---|---|---|---|---|---|
| OFFICE | PM:NRO/DARR/NRGA*. | LA:NRO/DARR/APOB*. | PM:NRO/DE/SEB1 | BC:NRO/DE:SEB | DD:NRO/DE |
| NAME | RSubbaratnam | BAbeywickrama | J Xu | BThomas | MSuhaibi |
| DATE | 12/27/2013 | 12/21/2012 | 1/7/2013 | 1/7/2013 | 1/10/2013 |
| OFFICE | PM:NRR/DE/EMCB | BC:NRR/DE/EMCB | PM?DPR/NRR | D:NRR/DE | DPS/OIS |
| NAME | ATsirigotis | MMurphy | K.Lenning | PHiland | TDonnel |
| DATE | 1/18/2013 | 1/22/2013 | 1/24/2013 | 1/23/2013 | 2/13/2013 |
| OFFICE | OGC/NLO | BC:NRO/DARR/APOB. | | | |
| NAME | S. Kirkwood | ACubbage. | | | |
| DATE | 2/11/2013 | 02/14/2013. | | | |

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[FR Doc. 2013–04514 Filed 2–28–13; 8:45 am]

**BILLING CODE 7590–01–P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act; Cancellation Notice of Annual Public Hearing

**TIME AND DATE:** 3:00 p.m., Wednesday, March 13, 2013.

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

**STATUS:** Hearing OPEN to the Public at 3:00 p.m.

**PURPOSE:** Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

**PROCEDURES:**

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Friday, March 8, 2013. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Friday, March 8, 2013. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the March 21, 2013 Board meeting will be posted on OPIC's Web site on or about Friday, March 1, 2013.

**CONTACT PERSON FOR INFORMATION:** Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 408–0297, or via email at *Connie.Downs@opic.gov*.

Dated: February 26, 2013.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 2013–04858 Filed 2–27–13; 11:15 am]

**BILLING CODE 3210–01–P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act; Cancellation Notice of Annual Public Hearing

OPIC's Sunshine Act notice of its Annual Public Hearing was published in the **Federal Register** (Volume 78, Number 17, Page 5516) on January 25, 2013. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's Annual Public Hearing scheduled for 2 p.m., March 13, 2013 has been cancelled.

**CONTACT PERSON FOR INFORMATION:** Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *Connie.Downs@opic.gov.*

Dated: February 26, 2013.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 2013–04859 Filed 2–27–13; 11:15 am]

**BILLING CODE 3210–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Application for Refund of Retirement Deductions/ FERS (SF 3106) and Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS (SF 3106A)

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 60-Day Notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM), is offering the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved

information collection request (ICR 3206–0170) regarding these related forms: Application For Refund of Retirement Deductions/FERS (SF 3106) and Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS (SF 3106A). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), and as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until April 30, 2013. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Retirement Services, Union Square 370, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler or sent via email to *Alberta.Butler@opm.gov*.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3H30, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

**SUPPLEMENTARY INFORMATION:** SF 3106, Application for Refund of Retirement Deductions/Federal Employees Retirement System (FERS), is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. SF 3106A, Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS, is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

*Analysis:*

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application For Refund of Retirement Deductions/Federal Employees Retirement System; Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS.

*OMB Number:* 3206–0170.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* SF 3106 = 8,000; SF 3106A = 6,400.

*Estimated Time per Respondent:* SF 3106 = 30 minutes; SF 3106A = 5 minutes.

*Total Burden Hours:* 4533.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2013–04725 Filed 2–28–13; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Application for Refund of Retirement Deductions (CSRS), SF 2802 and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System, SF 2802A

**AGENCY:** Office of Personnel Management.

**ACTION:** 60-Day Notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM) is offering the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR 3206–0128) regarding these related forms: Application For Refund of Retirement Deductions Civil Service Retirement System and Current/Former Spouse's Notification of Application for Refund of Retirement Deductions Under the Civil Service Retirement System. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35), and as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until April 30, 2013. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Union Square 370, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler or sent via email to *Alberta.Butler@opm.gov*.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, U.S. Office of Personnel Management, 1900 E Street NW., Room 3H30, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

**SUPPLEMENTARY INFORMATION:** SF 2802 is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. SF 2802A is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

**Analysis**

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Application For Refund of Retirement Deductions (CSRS)/Current/Former Spouse's Notification of Application for Refund of Retirement

Deductions Under the Civil Service Retirement System.

*OMB Number:* 3206–0128.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* SF 2802 = 3,741; SF 2802A = 3,389.

*Estimated Time per Respondent:* SF 2802 = 1 hour; SF 2802A = 15 minutes.

*Total Burden Hours:* 4,588.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2013–04724 Filed 2–28–13; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for Review: Survivor Annuity Election for a Spouse, RI 20–63; Cover Letter Giving Information About the Cost To Elect Less Than the Maximum Survivor Annuity, RI 20–116; Cover Letter Giving Information About the Cost To Elect the Maximum Survivor Annuity, RI 20–117

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** 60-Day Notice and request for comments.

**SUMMARY:** The Retirement Services, Office of Personnel Management (OPM), is offering the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR 3206–0174) regarding these related forms: Survivor Annuity Election for a Spouse (RI 20–63), Cover Letter Giving Information About The Cost to Elect Less Than the Maximum Survivor Annuity (RI 20–116), and Cover Letter Giving Information About The Cost to Elect the Maximum Survivor Annuity (RI 20–117). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), and as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**DATES:** Comments are encouraged and will be accepted until April 30, 2013. This process is conducted in accordance with 5 CFR 1320.1.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Retirement Services, Union Square Room 370, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler or sent via email to *Alberta.Butler@opm.gov*.

**FOR FURTHER INFORMATION CONTACT:** A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson or sent via email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

**SUPPLEMENTARY INFORMATION:** RI 20–63 is used by annuitants to elect a reduced annuity with a survivor annuity for their spouse. RI 20–116 is a cover letter for RI 20–63 giving information about the cost to elect less than the maximum survivor annuity. This letter is used to supply the information that may have been requested by the annuitant about the cost of electing less than the maximum survivor annuity. RI 20–117 is a cover letter for RI 20–63 giving information about the cost to elect the maximum survivor annuity. This letter may be used to ask for more information.

**Analysis**

*Agency:* Retirement Operations, Retirement Services, Office of Personnel Management.

*Title:* Survivor Annuity Election for a Spouse/Cover Letter Giving Information About the Cost To Elect Less Than the Maximum Survivor Annuity/Cover Letter Giving Information About the Cost To Elect the Maximum Survivor Annuity.

*OMB Number:* 3206–0174.

*Frequency:* On occasion.

*Affected Public:* Individuals or Households.

*Number of Respondents:* RI 20–63= 2,200; RI 20–116 & RI 20–117 = 200.

*Estimated Time per Respondent:* 55 minutes.

*Total Burden Hours:* 1,834.

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2013–04726 Filed 2–28–13; 8:45 am]

**BILLING CODE 6325–38–P**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

*Summary:* In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Voluntary Customer Surveys in Accordance with E.O. 12862; OMB 3220–0192.

In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated. The information collection, which was first approved by the Office of Management and Budget (OMB) in 1997, provides the RRB with a generic clearance authority. This generic authority allows the RRB to submit a variety of new or revised customer

survey instruments (needed to timely implement customer monitoring activities) to the Office of Management and Budget (OMB) for expedited review and approval.

The average burden per response for customer satisfaction activities is estimated to range from 2 minutes for a Web site questionnaire to 2 hours for participation in a focus group. The RRB estimates an annual burden of 1,750 annual respondents totaling 735 hours for the generic customer survey clearance.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*. Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV*. Written comments should be received within 60 days of this notice.

**Charles Mierzwa,**

*Chief of Information Resources Management.*

[FR Doc. 2013–04877 Filed 2–28–13; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68975; File No. SR–BYX–2013–008]**

## Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing of Proposed Rule Change Amending the Attestation Requirement of Rule 11.24 Allowing a Retail Member Organization To Attest That ''Substantially All'' Orders Submitted to The Retail Price Improvement Program Will Qualify as ''Retail Orders''

February 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is proposing to amend the attestation requirement of BYX Rule 11.24 to allow a Retail Member Organization[3] (''RMO'') to attest that ''substantially all'' orders submitted to the Retail Price Improvement Program (the ''Program'') will qualify as Retail Orders.[4] BYX Rule 11.24(b)(2)(C) currently requires RMOs to attest that ''any order'' will so qualify, effectively preventing certain significant retail brokers from participating in the Program due to operational constraints.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing an amendment to BYX Rule 11.24 to provide that an RMO may attest that ''substantially all'' of the orders it submits to the Program are Retail Orders, replacing the requirement that the RMO must attest that all submitted orders qualify as Retail Orders. Currently, under BYX Rule 11.24(b)(2)(C), a Member[5] wishing to become an RMO must submit: (A) An application form; (B) supporting documentation; and (C) an attestation that ''any order'' submitted as a Retail Order will qualify as such under BYX Rule 11.24.

The Exchange believes that the categorical nature of the current attestation language is preventing certain Members with retail customers from participating in the Program. In particular, the Exchange understands that some Members wishing to participate in the Program represent both Retail Orders as well as other agency flow that may not meet the strict definition of ''Retail Order.'' The Exchange further understands that limitations in order management systems and routing networks used by such Members may make it infeasible for them to isolate 100% of Retail Orders from other agency, non-Retail Order flow that they would direct to the Program. Unable to make the categorical attestation required by the current language of BYX Rule 11.24, some Members have chosen not to participate, notwithstanding that substantially all order flow from such Members would be Retail Orders. This limitation has the effect of preventing their retail customers from benefiting from the enhanced price competition and transparency of the Program.

Accordingly, the Exchange is proposing a de minimis relaxation of the RMO attestation requirement in order to accommodate these system limitations and expand the access of retail customers to the benefits of the Program. Specifically, as proposed, an RMO would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under existing definitions of the Program.

The Exchange will issue notice to its Members to make clear that the ''substantially all'' language is meant to permit the presence of only isolated and de minimis quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, an RMO would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Retail Member Organization is a Member (or a division thereof) that has been approved by the Exchange under BATS Rule 11.24 to submit Retail Orders.

[4] A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology.

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

in terms of the overall number of Retail Orders sent to the Exchange.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the RMO applicant to attest that ''substantially all'' of its orders will qualify as Retail Orders. The slight relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted to the Program would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated Members who have only slight differences in the capability of their systems will be able to equally benefit from the Program.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow Members, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still participate in the Program. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the price improvement and transparency offered by the Program and thereby potentially stimulate further price competition for retail orders.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the amendment, by increasing the level of participation in the Program, will increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Program on an exchange market would result in better prices for retail investors and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-exchange venues.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2013–008 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2013–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2013–008, and should be submitted on or before March 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04768 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–30403]**

## Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

February 22, 2013.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company

Act of 1940 for the month of February 2013. A copy of each application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 19, 2013, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street NE., Washington, DC 20549–8010.

**Legg Mason Global Trust Inc. [File No. 811–7418]**

**Legg Mason Charles Street Trust Inc. [File No. 811–8611]**

**SUMMARY:** Each applicant seeks an order declaring that it has ceased to be an investment company. The applicants have transferred their assets to corresponding shell series of Legg Mason Global Asset Management Trust and, on April 30, 2012, each made a final distribution to its shareholders based on net asset value. Expenses of approximately $26,463 and $21,223, respectively, incurred in connection with the reorganizations were paid by each applicant.

*Filing Date:* The applications were filed on February 4, 2013.

*Applicants' Address:* 100 International Dr., 7th Floor, Baltimore, MD 21202.

**Separate Account VA QQ [File No. 811–22556]**

**SUMMARY:** The Applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company based on abandonment of registration. The Applicant has no policyholders. Transamerica Financial Life Insurance Company, as the Applicant's depositor, has determined that the Applicant should be deregistered inasmuch as it is not engaged in or intending to engage in any business activities other than those necessary for winding up its affairs.

*Filing Date:* The application was filed on February 13, 2013.

*Applicant's Address:* 4333 Edgewood Road NE., Cedar Rapids, IA 52499–0001.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04753 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68982; File No. SR–DTC–2012–810]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing Amendment No. 1 and No Objection to Advance Notice Filing, as Modified by Amendment No. 1, To Reduce Liquidity Risk Relating to Its Processing of Maturity and Income Presentments and Issuances of Money Market Instruments

February 25, 2013.

### I. Introduction

On December 28, 2012, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–DTC–2012–810 (''Advance Notice'') pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[1] entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'' or ''Title VIII'') and Rule 19b–4(n) of the Securities Exchange Act of 1934 (''Exchange Act''). The Advance Notice was published in the **Federal Register** on January 18, 2013.[2] DTC filed Amendment No. 1 to the Advance Notice on January 30, 2013.[3] The Commission received one comment on the Advance Notice.[4] This publication serves as notice of filing Amendment No. 1 and of no objection to the Advance Notice, as modified by Amendment No. 1.

### II. Analysis

*A. Description of MMI Processing and Proposed Rule Change*

DTC filed the Advance Notice to permit it to make rule changes designed to reduce liquidity risk relating to DTC's processing of maturity and income presentments (''Maturity Obligations'') and issuances of money market instruments (''MMIs''), as discussed below.

MMIs are settled at DTC on a trade-for-trade basis. Issuers of MMIs that are not direct members of DTC enlist banks (''Issuing/Paying Agent'' or ''IPA'') to issue MMIs to broker-dealers, who in turn sell the MMIs to MMI investors. Debt issuance instructions are transmitted to DTC by the IPA, which triggers DTC crediting the IPA's DTC account and creating a deliver order to the broker-dealers' accounts on behalf of the investors.

Maturity Obligations are initiated automatically by DTC early each morning for MMIs maturing that day. DTC debits the amount of the Maturity Obligations to the appropriate IPA's account and credits the same amount to the appropriate broker-dealer and custodian accounts. The debits and credits are conditional until final settlement at the end of the day. According to DTC, IPAs do not have a legal obligation to honor maturing MMIs if they have not received funding from the issuer.

According to DTC, the common source of funding for Maturity Obligations is new issuances of MMIs in the same acronym by the same issuer on the day the Maturity Obligations are due. In a situation where new MMI issuances exceed the Maturity Obligations, the issuer would have no net funds payment due to the IPA on that day. However, because Maturity Obligations are processed and debited from IPA accounts automatically, IPAs currently incur credit risk if the issuers do not issue MMIs that exceed the

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] Release No. 34–68690 (Jan. 18, 2013), 78 FR 5516 (Jan. 25, 2013). DTC also filed a proposed rule change under Section 19(b)(1) of the Exchange Act relating to these changes. Release No. 34–68548 (Dec. 28, 2012), 78 FR 795 (Jan. 4, 2013). The Commission extended the period of review of the proposed rule change on February 5, 2013. Release No. 34–68834 (Feb. 5, 2013), 78 FR 9762 (Feb. 11, 2013).

[3] The Amendment revised the text of DTC's Settlement Service Guide related to the Advance Notice by adding a sentence to clarify the change as stated in the Advance Notice and correcting a grammatical error.

[4] *See* Comment from Karen Jackson dated December 30, 2012, *http://sec.gov/comments/sr-dtc-2012-10/dtc201210-1.htm.* The comment discusses the ability of individuals to withdraw money from money market accounts, which is not implicated by the proposed rule change.

Maturity Obligations.[5] Because IPAs do not have a legal obligation to honor maturing MMIs in the absence of funding from the issuer, IPAs may communicate to DTC an Issuer Failure/Refusal to Pay (''RTP'') for any issuer acronym up to 3:00 p.m. ET on the day of the affected Maturity Obligation. Such an instruction causes DTC, pursuant to its Rules, to reverse all transactions related to that issuer's acronym, including Maturity Obligations and any new MMI issuances, posing a potential for systemic risk since the reversals may override DTC's risk management controls such as the Collateral Monitor (''CM'')[6] and net debit cap (''Net Debit Cap,'' collectively with CM, ''Settlement Risk Controls'').[7]

DTC currently withholds intraday from each MMI member the largest provisional net credit (''LPNC'') of a single issuer's acronym for purposes of calculating the member's position in relation to the Settlement Risk Controls. DTC believes that the LPNC control helps protect DTC against either (i) the single largest issuer failure on a business day, or (ii) multiple failures on a business day that, taken together, do not exceed the largest provisional net credit.

Recent market events have increased DTC's awareness of the possibility of multiple simultaneous MMI issuer failures. Multiple simultaneous MMI issuer failures may cause more IPAs on a given day to communicate an RTP to DTC, which could increase the amount of the reversal that could override the DTC Settlement Risk Controls. As a result, DTC is increasing the LPNC withholding to the two largest net credits (on an acronym basis). In order to alleviate any settlement blockage that may occur as a result of withholding the two largest LPNCs and to promote settlement finality, DTC will no longer process an RTP initiated by an IPA that serves as both an issuing agent and a paying agent in the same acronym on the same day when new MMI issuances in an acronym exceed, in dollar value, the Maturity Obligations in the same acronym on the same day and the receiving members' Settlement Risk Controls permit completion of the transaction. As a result, DTC will remove the LPNC withholding with respect to such acronyms at the point in time when it eliminates the IPA's option to initiate an RTP.

*B. Discussion*

Although Title VIII does not specify a standard of review for an Advance Notice, the stated purpose of Title VIII is instructive.[8] The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically-important financial market utilities (''FMUs'')[9] and providing an enhanced role for the Federal Reserve Board in the supervision of risk management standards for systemically-important FMUs.[10]

Section 805(a)(2) of the Clearing Supervision Act[11] authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act[12] states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- Promote robust risk management;
- Promote safety and soundness;
- Reduce systemic risks; and
- Support the stability of the broader financial system.

The Commission adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act on October 22, 2012 (''Clearing Agency Standards'').[13] The Clearing Agency Standards became effective on January 2, 2013 and require clearing agencies that perform central counterparty services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[14] As such, it is appropriate for the Commission to review Advance Notices against these risk management standards that the Commission promulgated under Section 805(a) and the objectives and principles of these risk management standards as described in Section 805(b).

The proposal to increase the LPNC withholding from one to two on an acronym basis is designed to further mitigate intraday credit risk borne by DTC and its members during the time between the initiation of Maturity Obligations and the MMI issuer funding for those Maturity Obligations, typically by issuing new MMIs. DTC states that the initiative for the proposal was a heightened awareness of the possibility of multiple simultaneous MMI issuer failures. The proposal to no longer process an RTP initiated by an IPA when new issuances in an acronym exceed, in dollar value, the Maturity Obligations in the same acronym on the same day is designed to promote settlement finality and to alleviate the possibility of settlement blockage that may result from DTC increasing the LPNC withholding from one to two. Consistent with Section 805(a), the Commission believes these changes promote the safety and soundness of the operations of DTC, reduce systemic risks typically associated with MMI transactions, and support the stability of the broader financial system by promoting settlement finality of MMI transactions.

Furthermore, Commission Rules 17Ad–22(d)(11) regarding Default Procedures and 17Ad–22(d)(12) regarding Timing of Settlement Finality, both adopted as part of the Clearing

[5] DTC guidelines suggest that issuers fund their net debit obligations to the IPA by 1:00 p.m. ET to alleviate this credit risk.

[6] A DTC ''Participant'' is a regulated institution that is eligible to use and uses DTC's services. *See* DTC Participant Handbook (Sept. 2011). DTC tracks collateral in a Participant's DTC account through the CM. At all times, the CM reflects the amount by which the collateral value in the account exceeds the net debit balance in the account. When processing a transaction, DTC verifies that the CM of each of the deliverer and receiver will not become negative when the transaction is processed. If the transaction would cause either party to have a negative CM, the transaction will recycle until the deficient account has sufficient collateral to proceed or until the applicable cutoff occurs. *See id.*

[7] The Net Debit Cap control is designed so that DTC may complete settlement even if a Participant fails to settle. Before completing a transaction in which a Participant is the receiver, DTC calculates the effect the transaction would have on such Participant's account, and determines whether any resulting net debit balance would exceed the Participant's net debit cap. Any transaction that would cause the net debit balance to exceed the net debit cap is placed on a pending (recycling) queue until the net debit cap will not be exceeded by processing the transaction. *See* DTC Participant Handbook (Sept. 2011).

[8] 12 U.S.C. 5461(b).

[9] DTC was designated a systemically-important FMU on July 18, 2012, by the Financial Stability Oversight Council. Financial Stability Oversight Council 2012 Annual Report, Appendix A, *http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[10] 12 U.S.C. 5461(b).

[11] 12 U.S.C. 5464(a)(2).

[12] 12 U.S.C. 5464(b).

[13] Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

[14] The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors governing the operations of designated FMUs that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. *See* Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012).

Agency Standards,[15] require that clearing agencies establish, implement, maintain and enforce, written policies and procedures reasonably designed to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, and require that intraday or real-time finality be provided where necessary to reduce risks, respectively.[16] Here, as described in detail above, DTC's proposed rule change to increase the LPNC from one to two largest provisional credits should help it better contain losses and liquidity pressures, yet continue to meet its obligations; meanwhile, DTC's proposed rule change to no longer process RTPs for an acronym when the described circumstances are met and, then, remove the LPNC for the same acronym when an RTP is no longer viable should improve settlement finality, thus reducing DTC's risk. Since RTPs will no longer be processed when new issuances in an acronym exceed Maturity Obligations in the same acronym in the same day, removing the LPNC control in these cases should not increase DTC's exposure to MMI issuer credit risk.

## III. Conclusion

*It is therefore noticed,* pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,[17] that the Commission *does not object* to the proposed rule change described in the Advance Notice, as modified by Amendment No. 1, and that DTC be and hereby is *authorized* to implement the proposed rule change as of the date of this notice or the date of the ''Notice of Filing Amendment No. 2 and Order Approving Proposed Rule Change, as Modified by Amendment No. 2, to Reduce Liquidity Risk Relating to [DTC's] Processing of Maturity and Income Presentments and Issuances of Money Market Instruments,'' SR–DTC–2012–10, whichever is later.

By the Commission.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04749 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

[15] Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

[16] *Id.* at 131–139.

[17] 12 U.S.C. 5465(e)(1)(I).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68908; File No. SR–CHX–2013–05]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending CHX Article 8, Rule 13, Which, Among Other Things, Prohibits Deceptive and Other Abusive Telemarketing Acts or Practices, To Correct a Citation Error

February 12, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on February 1, 2013, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CHX has filed this proposal pursuant to Exchange Act Rule 19b–4(f)(6),[3] which is effective upon filing with the Commission.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend CHX Article 8, Rule 13, which, among other things, prohibits deceptive and other abusive telemarketing acts or practices, to correct a citation error. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes*

1. Purpose

The Exchange proposes to amend Article 8, Rule 13 (Advertising, Promotion and Telemarketing), which, among other things, prohibits deceptive and other abusive telemarketing acts or practices. Specifically, the Exchange proposes to amend Article 8, Rule 13(d)(1)(A), to correct a citation error.

Currently, the Rule correctly provides that no Participant [4] or person associated therewith shall initiate any outbound telephone call to any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless the Participant has an ''established business relationship'' with the person.[5] However, the Rule incorrectly states that the term ''established business relationship'' is defined ''pursuant to paragraph (m)(12).'' Instead, the citation should refer to CHX Article 8, Rule 13(p)(12), which provides the definition for an ''established business relationship.'' [6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Exchange Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it corrects a citation error in a CHX rule that

[4] *See* CHX Article 1, Rule 1(s).

[5] *See* CHX Article 8, Rule 13(d)(1)(A).

[6] CHX Article 8, Rule 13(p)(12) provides the following: ''12. The term ''established business relationship'' means a relationship between a Participant and a person if: (A) The person has made a financial transaction or has a security position, a money balance, or account activity with the Participant or at a clearing firm that provides clearing services to such Participant within the previous eighteen (18) months immediately preceding the date of the telemarketing call; (B) the Participant is the broker-dealer of record for an account of the person within the previous eighteen (18) months immediately preceding the date of the telemarketing call; or (C) the person has contacted the Participant to inquire about a product or service offered by the Participant within the previous three (3) months immediately preceding the date of the telemarketing call.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

establishes telemarketing guidelines, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system and contributes to the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Specifically, the proposed change will not impose any burden on competition where the proposed change to correct a citation error does not substantively change the meaning or application of the telemarketing rules outlined under Article 8, Rule 13 and comports such rules with the telemarketing rules of other exchanges.

*C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others*

CHX neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action**

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a ''non-controversial'' rule change in accordance with Section 19(b)(3)(A) of the Exchange Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange asserts that the proposed rule change (i) does not significantly affect the protection of investors or the public interest, (ii) does not impose any significant burden on competition, and (iii) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

The Exchange believes that this proposal is non-controversial and eligible to become effective immediately because it corrects a citation error by amending the rule to correctly cite to an already existing rule. For the foregoing reasons, the Exchange believes that this rule filing qualifies for immediate effectiveness as a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4.[11] The Exchange respectfully requests that the Commission to waive the 30-day operative delay and five-day notice requirement to allow the citation correction.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2013–05 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–2013–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of CHX.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2013–05 and should be submitted on or before March 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04788 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68980; File No. SR–C2–2013–009]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2013, the C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On February 1, 2013, the Exchange began operating under a new fees structure for simple, non-complex orders in equity options classes.[3] This new fees structure factors BBO Market Width at the time of execution into determining the amount of fees and rebates, and includes a maximum fee of $0.85 per contract and a maximum rebate of $0.75 per contract. More specifically, fees are calculated based on the following formula (fees are calculated on a per-contract basis):[4]

Fee = (C2 BBO Market Width at time of execution) × (Market Participant Rate) × 50.

Rebates are calculated based upon the following formula (rebates are calculated on a per-contract basis):[5]

Rebate = (C2 BBO Market Width at time of execution) × (Order Size Multiplier) × 50.

The C2 BBO Market Width is the difference between the quoted best offer and best bid in each class on C2 (the displayed C2 ask price minus the displayed C2 bid price).

However, the new fees structure does not directly contemplate a circumstance in which an execution occurs when there is no displayed C2 ask price. Such transactions occasionally occur, when a C2 bid is displayed (while an ask price is not) and an order is sent to the Exchange that immediately interacts with that displayed C2 bid. Currently, if such a circumstance occurs, it would result in a negative BBO Market Width, which would result in a negative fee or rebate amount (meaning that the Exchange would actually be paying a rebate where a fee would otherwise be assessed and that the Exchange would be assessing a fee where a rebate would otherwise be paid[6]).

As such, the Exchange proposes to amend the section of its Fees Schedule that regards this new fees structure to state that if an execution occurs when there is no Displayed C2 Ask Price, the maximum fee and/or rebate will apply. The purpose of this proposed change is to ensure that fees and rebates are still assessed in circumstances where there may not be both a bid and an offer, and that the maximum fee and/or rebates applies in such circumstances, since the lack of a positive BBO Market Width does not imply a narrow bid-ask spread.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that, if an execution occurs when there is no displayed C2 ask price, applying the maximum fee and/or rebate is reasonable because the new fees structure described above and in SR–C2–2013–004 is designed to encourage tighter quoting (and thus tighter spreads), and the execution of a trade when there is no displayed C2 ask price will not serve to narrow the spread. The Exchange believes that this proposed change is equitable and not unfairly discriminatory because it will apply to all market participants who trade when there is no displayed C2 ask price, and the maximum amounts will be the same as they were previously and apply to the same market participants as they did previously.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. C2 does not believe that the proposed rule change will impose any burden on intramarket competition because it will apply to all market participants who trade when there is no displayed C2 ask price, and the maximum amounts will be the same as they were previously and apply to the same market participants as they did previously. C2 does not believe that the proposed rule change will impose any burden on intermarket competition because very few trades occur when there is no displayed ask price, and the new C2 fees structure is very unique and different than those offered on other U.S. options exchanges. However, to the extent that this change could attract market participants trading on other exchanges to do so on C2, market participants trading on other exchanges can always elect to do so.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[3] *See* Securities Exchange Act Release No. 68792 (January 31, 2013) (SR–C2–2013–004).

[4] The Market Participant Rates are different rates for different types of market participants, and are currently set as follows: C2 Market-Maker (30%); Public Customer (Maker) (40%); and All Other Origins (50%).

[5] The Order Size Multiplier is a different multiplier based upon the size of the order, and are currently set as follows: 1–10 contracts in an order (36%); 11–99 contracts in an order (30%); 100–250 contracts in an order (20%); and 251+ contracts in an order (0%).

[6] No circumstance has occurred yet in which the Exchange has assessed a fee to a Public Customer Taker who would otherwise receive a rebate if there was a displayed C2 ask price.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2013–009 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2013–009 and should be submitted on or before March 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04748 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68985; File No. SR–FINRA–2013–016]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Rules in Accordance With the Regulation NMS Plan To Address Extraordinary Market Volatility

February 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA rules in accordance with the provisions of the Regulation NMS Plan to Address Extraordinary Market Volatility.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

On May 31, 2012, the Commission approved a joint industry plan to address extraordinary market volatility (''Limit Up-Limit Down'' or the ''Plan'') filed by FINRA and the other self-regulatory organizations (''Participants'')[4] pursuant to Section 11A of the Act[5] and Rule 608 thereunder.[6] The Limit Up-Limit Down mechanism is intended to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010 by generally prohibiting the display of offers at prices below the lower price band and bids above the upper price band and the execution of trades outside the price bands for NMS Stocks.[7] The Plan combines the use of the Limit Up-Limit Down mechanism with trading pauses to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). By its terms, the Plan will be implemented on a one-year pilot basis in two phases.[8] Pursuant to the Plan, each Participant must adopt rules requiring compliance by its members with the provisions of the Plan.[9]

To that end, in furtherance of its obligations under the Plan, FINRA is proposing to: (1) Adopt new Rule 6190 (Compliance with Regulation NMS Plan to Address Extraordinary Market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (Approval Order). A copy of the Plan is attached as Exhibit A to the Approval Order.

The Plan was subsequently amended to, among other things, revise the implementation schedule, as discussed further below. *See* Letter dated January 17, 2013 from Janet McGinness, EVP & Corporate Secretary, General Counsel, NYSE Markets, to Elizabeth M. Murphy, Secretary, SEC, available at *www.nyse.com/attachment/LULD_Plan_Amendment_No_2.pdf.*

[5] 15 U.S.C. 78k–1.

[6] 17 CFR 242.608.

[7] The single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act shall calculate and disseminate to the public the lower and upper price bands for an NMS Stock during regular trading hours.

[8] Phase I of Plan implementation will begin on April 8, 2013 in select Tier 1 NMS Stock symbols, with full Phase I implementation completed three months after the initial date of Plan operations (or such earlier date as may be announced by the Plan processor with at least 30 days notice). Phase II of the Plan will commence six months after the initial date of the Plan (or such earlier date as may be announced by the Plan processor with at least 30 days notice).

[9] *See* Section II(B) of the Plan.

Volatility) and (2) amend Rules 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) and 6121 (Trading Halts Due to Extraordinary Market Volatility).

Proposed Rule 6190 requires members that are trading centers in NMS Stocks to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the requirements of the Plan and specifically to prevent: (1) The execution of trades at prices that are below the lower price band or above the upper price band for an NMS Stock, except as permitted under the Plan; (2) the display of offers below the lower price band and bids above the upper price band for an NMS Stock; and (3) the execution of trades in an NMS Stock during a trading pause.[10] Under the Plan, the term ''trading center'' has the meaning set forth in Regulation NMS under the Exchange Act.[11]

FINRA is clarifying that the proposed rule applies to members to the extent that they are trading centers, as defined under the Plan, and are acting as such with respect to any given trade or quotation. For example, Firm A is an OTC market maker and also a trading center. Firm A, in its capacity as an OTC market maker, receives a customer order to sell and routes the order to an exchange or other trading center. In that instance, Firm A could rely on the exchange or other trading center to ensure compliance with the Plan, and for example, if the offer were displayed in violation of the Plan, FINRA would not deem Firm A to be in violation of proposed Rule 6190. This rule will be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

Rule 5260 generally prohibits members from directly or indirectly effecting any transaction or publishing any quotation during a trading halt, including a trading pause. Because the Plan permits all bids and offers in an NMS Stock to be displayed during a trading pause, FINRA is proposing to amend Rule 5260 to prohibit member quoting and trading activity during a trading halt, except as permitted under the Plan.

In addition, FINRA is proposing to amend Rule 6121.01 to reflect the Plan's trading pause provisions and to clarify that if trading in an NMS Stock is permitted to resume after a trading pause under the Plan, then FINRA may permit the resumption of trading otherwise than on an exchange in such NMS Stock if trading has commenced on at least one other national securities exchange (i.e., when a transaction has been executed on an exchange, not merely when quoting has commenced on the exchange). This provision will be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

FINRA also is proposing to amend Rule 6121.01 to clarify that the current trading pause provisions will continue to apply to Tier 1 and Tier 2 NMS Stocks until the Plan is implemented for those securities. As noted above, Phase I of the Plan will begin on April 8, 2013 for certain Tier 1 NMS Stocks. As of that date, Rule 6121.01(b) will not apply to those Tier 1 NMS Stocks, but will continue to apply to all other Tier 1 and Tier 2 NMS Stocks. Upon full implementation of Phase I, this provision will apply only to Tier 2 NMS Stocks and will no longer be in effect upon full implementation of Phase II of the Plan.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change shall be the implementation date of the Regulation NMS Plan to Address Extraordinary Market Volatility, which currently is expected to be April 8, 2013.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act[13] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. FINRA believes that the proposed rule change meets these requirements in that it facilitates compliance with the Plan, which has been approved and found by the Commission to be reasonably designed to prevent potentially harmful price volatility, including severe volatility of the kind that occurred on May 6, 2010. Accordingly, FINRA believes that the proposed rules will further the goals of investor protection and fair and orderly markets.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, the Plan requires that the Participants adopt rules requiring compliance by their members with the provisions of the Plan. FINRA believes that the other Participants will file similar proposals, and therefore, the proposed rule change will help to ensure consistent rules across the marketplace. In addition, FINRA does not believe that the Plan introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.[14]

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

FINRA has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the

[10] No trades in a paused NMS Stock may occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[11] Specifically, Rule 600(b) of Regulation NMS defines ''trading center'' as a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. 17 CFR 242.600(b).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78k–1(a)(1).

[14] 15 U.S.C. 78k–1(c)(1)(D).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires FINRA to give the Commission written notice of FINRA's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act [17] to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–FINRA–2013–016 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2013–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2013–016 and should be submitted on or before March 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04796 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

[17] 15 U.S.C. 78s(b)(2)(B).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68983; File No. SR–DTC–2012–10]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing Amendment No. 2 and Order Approving Proposed Rule Change, as Modified by Amendment No. 2, To Reduce Liquidity Risk Relating to Its Processing of Maturity and Income Presentments and Issuances of Money Market Instruments

February 25, 2013.

## I. Introduction

On December 17, 2012, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2012–10 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published in the **Federal Register** on January 4, 2013.[3] DTC filed Amendment No. 2 to the Proposed Rule Change on January 30, 2013.[4] The Commission extended the period of review of the Proposed Rule Change on February 5, 2013.[5] The Commission received one comment on the Proposed Rule Change.[6] This publication serves as notice of filing Amendment No. 2 and order approving the Proposed Rule Change, as modified by Amendment No. 2.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Release No. 34–68548 (Dec. 28, 2012), 78 FR 795 (Jan. 4, 2013). DTC also filed an advance notice pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 relating to these changes. Release No. 34–68690 (Jan. 18, 2013), 78 FR 5516 (Jan. 25, 2013).

[4] DTC filed Amendment No. 1 to the Proposed Rule Change on January 29, 2013, and withdrew it because of technical errors. DTC filed Amendment No. 2 to: (i) Correct the technical errors in Amendment No. 1 and (ii) correct the text of DTC's Settlement Service Guide related to the Proposed Rule Change by adding a sentence to clarify the change as stated in the Proposed Rule Change and correcting a grammatical error therein.

[5] Release No. 34–68834 (Feb. 5, 2013), 78 FR 9762 (Feb. 11, 2013).

[6] *See* Comment from Karen Jackson dated December 30, 2012, *http://sec.gov/comments/sr-dtc-2012-10/dtc201210-1.htm.* The comment discusses the ability of individuals to withdraw money from money market accounts, which is not implicated by the proposed rule change.

## II. Analysis

### *A. Description of MMI Processing and Proposed Rule Change*

DTC filed the Proposed Rule Change to permit it to make rule changes designed to reduce liquidity risk relating to DTC's processing of maturity and income presentments (''Maturity Obligations'') and issuances of money market instruments (''MMIs''), as discussed below.

MMIs are settled at DTC on a trade-for-trade basis. Issuers of MMIs that are not direct members of DTC enlist banks (''Issuing/Paying Agent'' or ''IPA'') to issue MMIs to broker-dealers, who in turn sell the MMIs to MMI investors. Debt issuance instructions are transmitted to DTC by the IPA, which triggers DTC crediting the IPA's DTC account and creating a deliver order to the broker-dealers' accounts on behalf of the investors.

Maturity Obligations are initiated automatically by DTC early each morning for MMIs maturing that day. DTC debits the amount of the Maturity Obligations to the appropriate IPA's account and credits the same amount to the appropriate broker-dealer and custodian accounts. The debits and credits are conditional until final settlement at the end of the day. According to DTC, IPAs do not have a legal obligation to honor maturing MMIs if they have not received funding from the issuer.

According to DTC, the common source of funding for Maturity Obligations is new issuances of MMIs in the same acronym by the same issuer on the day the Maturity Obligations are due. In a situation where new MMI issuances exceed the Maturity Obligations, the issuer would have no net funds payment due to the IPA on that day. However, because Maturity Obligations are processed and debited from IPA accounts automatically, IPAs currently incur credit risk if the issuers do not issue MMIs that exceed the

Maturity Obligations.[7] Because IPAs do not have a legal obligation to honor maturing MMIs in the absence of funding from the issuer, IPAs may communicate to DTC an Issuer Failure/Refusal to Pay (''RTP'') for any issuer acronym up to 3:00 p.m. ET on the day of the affected Maturity Obligation. Such an instruction causes DTC, pursuant to its Rules, to reverse all transactions related to that issuer's acronym, including Maturity Obligations and any new MMI issuances, posing a potential for systemic risk since the reversals may override DTC's risk management controls such as the Collateral Monitor (''CM'') [8] and net debit cap (''Net Debit Cap,'' collectively with CM, ''Settlement Risk Controls'').[9]

DTC currently withholds intraday from each MMI member the largest provisional net credit (''LPNC'') of a single issuer's acronym for purposes of calculating the member's position in relation to the Settlement Risk Controls. DTC believes that the LPNC control helps protect DTC against either (i) the single largest issuer failure on a business day, or (ii) multiple failures on a business day that, taken together, do not exceed the largest provisional net credit.

Recent market events have increased DTC's awareness of the possibility of multiple simultaneous MMI issuer failures. Multiple simultaneous MMI issuer failures may cause more IPAs on a given day to communicate an RTP to DTC, which could increase the amount of the reversal that could override the DTC Settlement Risk Controls. As a result, DTC is increasing the LPNC withholding to the two largest net credits (on an acronym basis). In order to alleviate any settlement blockage that may occur as a result of withholding the two largest LPNCs and to promote settlement finality, DTC will no longer process an RTP initiated by an IPA that serves as both an issuing agent and a paying agent in the same acronym on the same day when new MMI issuances in an acronym exceed, in dollar value, the Maturity Obligations in the same acronym on the same day and the receiving members' Settlement Risk Controls permit completion of the transaction. As a result, DTC will remove the LPNC withholding with respect to such acronyms at the point in time when it eliminates the IPA's option to initiate an RTP.

*B. Discussion*

Section 17A(b)(3)(F) of the Act requires that, among other things, ''[t]he rules of the clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and * * * to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.'' [10] Furthermore, Commission Rules 17Ad–22(d)(11) regarding Default Procedures and 17Ad–22(d)(12) regarding Timing of Settlement Finality, both adopted as part of the Clearing Agency Standards,[11] require that clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default, and require that intraday or real-time finality be provided where necessary to reduce risks, respectively.[12]

Here, as described in detail above, DTC's proposed rule change to increase the LPNC from one to two largest provisional credits should, generally, help further safeguard the securities and settlement process as a whole, and, more specifically, help DTC better contain losses and liquidity pressures, yet continue to meet its obligations; meanwhile, DTC's proposed rule change to no longer process RTPs for an acronym when the described circumstances are met and, then, remove the LPNC for the same acronym when an RTP is no longer viable should improve the prompt and accurate clearance and settlement of securities (i.e., settlement finality), thus reducing DTC's risk. Since RTPs will no longer be processed when new issuances in an acronym exceed Maturity Obligations in the same acronym in the same day, removing the LPNC control in these cases should not increase DTC's exposure to MMI issuer credit risk.

**III. Conclusion**

On the basis of the foregoing, the Commission finds the Proposed Rule Change, as modified by Amendment No. 2, consistent with the requirements of the Act, particularly with the requirements of Section 17A of the Act,[13] and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change SR–DTC–2012–10, as modified by Amendment No. 2, be and hereby is APPROVED [15] as of the date of this order or the date of the ''Notice of Filing Amendment No. 1 and No Objection to Advance Notice Filing, as Modified by Amendment No. 1, to Reduce Liquidity Risk Relating to [DTC's] Processing of Maturity and Income Presentments and Issuances of Money Market Instruments,'' SR–DTC–2012–810, whichever is later.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04750 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68984; File No. SR–Phlx–2013–17]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Routing Fees to C2

February 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2013, NASDAQ OMX PHLX LLC

[7] DTC guidelines suggest that issuers fund their net debit obligations to the IPA by 1:00 p.m. ET to alleviate this credit risk.

[8] A DTC ''Participant'' is a regulated institution that is eligible to use and uses DTC's services. *See* DTC Participant Handbook (Sept. 2011). DTC tracks collateral in a Participant's DTC account through the CM. At all times, the CM reflects the amount by which the collateral value in the account exceeds the net debit balance in the account. When processing a transaction, DTC verifies that the CM of each of the deliverer and receiver will not become negative when the transaction is processed. If the transaction would cause either party to have a negative CM, the transaction will recycle until the deficient account has sufficient collateral to proceed or until the applicable cutoff occurs. *See id.*

[9] The Net Debit Cap control is designed so that DTC may complete settlement even if a Participant fails to settle. Before completing a transaction in which a Participant is the receiver, DTC calculates the effect the transaction would have on such Participant's account, and determines whether any resulting net debit balance would exceed the Participant's net debit cap. Any transaction that would cause the net debit balance to exceed the net debit cap is placed on a pending (recycling) queue until the net debit cap will not be exceeded by processing the transaction. *See* DTC Participant Handbook (Sept. 2011).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

[12] *Id.* at 131–139.

[13] 15 U.S.C. 78q–1.

[14] 15 U.S.C. 78s(b)(2).

[15] In approving the Proposed Rule Change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Section V of the Pricing Schedule entitled ''Routing Fees.''

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this filing is to amend Routing Fees in Section V of the Pricing Schedule in order to recoup costs applicable to the C2 Options Exchange, Inc. (''C2'') that the Exchange incurs for routing and executing orders in equity options. Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's transaction fee. The Exchange assesses a $0.05 per contract fixed Routing Fee when routing orders to the NASDAQ Options Market LLC (''NOM'') and NASDAQ OMX BX, Inc. (''BX Options'') and a $0.11 per contract fixed Routing Fee to all other options exchanges in addition to the actual transaction fee or rebate paid by the away market.[3]

The fixed Routing Fee is based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (''NOS''), a member of the Exchange and the Exchange's exclusive order router,[4] to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs a clearing-related cost [5] and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees (''ORFs'') and technical costs associated with routing options.

C2 recently filed a rule change to amend its transaction fees and rebates for simple,[6] non-complex orders, in equity options classes which became operative on February 1, 2013.[7] C2 assesses its transaction fees based on a formula wherein fees are calculated on a per-contract basis.[8] C2 pays rebates based on a formula wherein rebates are calculated on a per-contract basis.[9] Because of this recent rule change, the Exchange proposes to amend C2 Routing Fees to provide transparency to its market participants.

The Exchange proposes to amend its non-Customer C2 Routing Fees to assess the fixed cost of $0.11 per contract plus a flat rate of $0.85 per contract, except with respect to Customers.[10] With respect to Customers, the Exchange proposes not to pass the rebate offered by C2, as is the case today for Routing to C2 and other away markets. The Exchange proposes to not assess Customers a Routing Fee when routing orders to C2. This is similar to the manner in which the BATS Exchange, Inc. (''BATS'') prices Customer orders routed to C2.[11] The Exchange proposes to specifically note the amended rates on its Pricing Schedule in order to simplify C2 Routing Fees.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that its proposal to amend non-Customer C2 Routing Fees from actual transaction charges to a flat rate, in addition to its fixed cost, is reasonable because the current C2 Routing Fees are not transparent. The Exchange believes that assessing a flat rate in addition to the fixed cost assessed by the Exchange will provide market participants certainty with respect to C2 Routing Fees. Further, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing

[3] Today, the transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee. With respect to the rebate, the Exchange pays a market participant the rebate offered by an away market where there is such a rebate. Any rebate available is netted against a fee assessed by the Exchange. The Exchange is not proposing to amend its calculation of the away market's transaction fee as described herein.

[4] In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (''NOS''), a member of the Exchange, as the Exchange's exclusive order router. *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). NOS is utilized by the Exchange's fully automated options trading system, PHLX XL.® ''PHLX XL'' is the Exchange's automated options trading system.

[5] The Options Clearing Corporation (''OCC'') assesses a clearing fee of $0.01 per contract side. *See* Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR–OCC–2012–18).

[6] C2 defines simple orders to exclude ETFs and indexes.

[7] *See* Securities Exchange Act Release No. 68792 (January 31, 2013), 78 FR 8621 (February 6, 2013) (SR–C2–2013–004).

[8] C2 utilizes the following formula to calculate its transaction fees: C2 BBO Market Width at time of execution) x (Market Participant Rate) x 50. The C2 BBO Market Width is the difference between the quoted best offer and best bid in each class on C2 (the displayed C2 ask price minus the displayed C2 bid price). The Market Participant Rates are different rates for different types of market participants, as follows: Market Participant Rate; C2 Market-Maker 30%; Public Customer (Maker) 40%; all other origins 50%. *See* C2's Fees Schedule.

[9] C2 utilizes the following formula to compute rebates for simple, non-complex Public Customer orders in all equity options classes that remove liquidity (i.e. takers): Rebate = (C2 BBO Market Width at time of execution) x (Order Size Multiplier) x 50. The order size multiplier is as follows: 1–10 contracts will be 36%; 11–99 contracts will be 30%; 100–250 contracts will be 20% and 251 plus contracts is 0%. The maximum rebate is capped at $0.75 per contract. *See* C2's Fees Schedule.

[10] Recent pricing changes by C2 will result in a maximum fee of $0.85 per contract for non-Customer orders executed at C2 and rebates or free executions for Customer orders executed at C2.

[11] *See* SR–BATS–2013–012 (not yet published).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options. The Exchange believes that the proposed non-Customer C2 Routing Fees will enable the Exchange to recover the costs it incurs to route orders to C2 in addition to the flat fee to recoup transaction costs.

The Exchange believes that its proposal to amend the non-Customer C2 Routing Fees from actual transaction charges to a flat rate, in addition to its fixed cost, is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same C2 Routing Fees to all non-Customer market participants. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for orders routed to and executed at C2. The Exchange believes that its proposed Routing Fees for routing non-Customer orders to C2 are reasonable because they are an approximation of the maximum fees the Exchange will be charged for such executions, including costs. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to C2.

The Exchange believes that its proposal to not pay a rebate to Customers and assess no Customer Routing Fee is reasonable, equitable and not unfairly discriminatory. The Exchange believes that the pricing structure is reasonable because, although not an approximation of the cost of routing to C2, Customer orders will still receive executions free of charge, whereas all other non-Customer routed orders routed to C2 would be assessed a Routing Fee. The Exchange believes that the proposed pricing for Customer orders is equitable and not unfairly discriminatory because it would apply uniformly to all Customer transactions. Members desiring the rebate offered by C2 can route orders directly in order to take advantage of the rebate. Market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid Routing Fees.

Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.05 per contract to route orders to NASDAQ OMX away markets (BX Options and NOM) because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to BX Options and NOM are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[14] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to BX Options and NOM. It is important to note with respect to routing to an away market that orders are routed based on price first. PHLX XL will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) (''NBBO'') price.[15]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the rule change would allow the Exchange to recoup its costs when routing orders designated as available for routing by the market participant to C2. Members and member organizations may choose to mark the order as ineligible for routing to avoid incurring these fees.[16] Today, other options exchanges also assess similar fees to recoup costs incurred by the Exchange to route orders to away markets. PHLX XL routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) (''NBBO'') price and based on price first.[17]

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–17 on the subject line.

[14] *See* Chapter VI, Section 11 of the BX Options and NOM Rules.

[15] *See* Rule 1080(m). The Phlx XL II system will contemporaneously route an order marked as an Intermarket Sweep Order (''ISO'') to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) The disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

[16] *Id.*

[17] *See supra* note 15.

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–17, and should be submitted on or before March 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04795 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68976; File No. SR–NASDAQ–2013–029]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees to C2

February 25, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 12, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend its Routing Fees to the C2 Options Exchange, Inc. (''C2'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ proposes to amend its Routing Fees at Chapter XV, Section 2(3) of the Exchange Rules in order to recoup costs applicable to the C2 Options Exchange, Inc. (''C2'') that the Exchange incurs for routing and executing orders in equity options. Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's transaction fee. The Exchange assesses a $0.05 per contract fixed Routing Fee when routing orders to the NASDAQ OMX PHLX LLC (''PHLX'') and NASDAQ OMX BX, Inc. (''BX Options'') and a $0.11 per contract fixed Routing Fee to all other options exchanges in addition to the actual transaction fee or rebate paid by the away market.[3]

The fixed Routing Fee is based on costs that are incurred by the Exchange when routing to an away market in addition to the away market's transaction fee. For example, the Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (''NOS''), a member of the Exchange and the Exchange's exclusive order router.[4] Each time NOS routes to away markets NOS incurs a clearing-related cost [5] and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange also incurs administrative and technical costs associated with operating NOS, membership fees at away markets, Options Regulatory Fees (''ORFs'') and technical costs associated with routing options.

C2 recently filed a rule change to amend its transaction fees and rebates

[3] Today, the transaction fee assessed by the Exchange is based on the away market's actual transaction fee or rebate for a particular market participant at the time that the order was entered into the Exchange's trading system. This transaction fee is calculated on an order-by-order basis, since different away markets charge different amounts. In the event that there is no transaction fee or rebate assessed by the away market, the only fee assessed is the fixed Routing Fee. With respect to the rebate, the Exchange pays a market participant the rebate offered by an away market where there is such a rebate. Any rebate available is netted against a fee assessed by the Exchange. The Exchange is not proposing to amend its calculation of the away market's transaction fee as described herein.

[4] *See* NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

[5] The Options Clearing Corporation (''OCC'') assesses a clearing fee of $0.01 per contract side. *See* Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR–OCC–2012–18).

for simple,[6] non-complex orders, in equity options classes which became operative on February 1, 2013.[7] C2 assesses its transaction fees based on a formula wherein fees are calculated on a per-contract basis.[8] C2 pays rebates based on a formula wherein rebates are calculated on a per-contract basis.[9] Because of this recent rule change, the Exchange proposes to amend C2 Routing Fees to provide transparency to its market participants.

The Exchange proposes to amend its non-Customer C2 Routing Fees to assess the fixed cost of $0.11 per contract plus a flat rate of $0.85 per contract, except with respect to Customers.[10] With respect to Customers, the Exchange proposes not to pass the rebate offered by C2, as is the case today for Routing to C2 and other away markets. The Exchange proposes to not assess Customers a Routing Fee when routing orders to C2. This is similar to the manner in which the BATS Exchange, Inc. (''BATS'') prices Customer orders routed to C2.[11] The Exchange proposes to specifically note the amended rates in its rule text in order to simplify C2 Routing Fees.

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

2. Statutory Basis

NASDAQ believes that its proposal to amend its pricing is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among its Participants.

The Exchange believes that its proposal to amend non-Customer C2 Routing Fees from actual transaction charges to a flat rate, in addition to its fixed cost, is reasonable because the current C2 Routing Fees are not transparent. The Exchange believes that assessing a flat rate in addition to the fixed cost assessed by the Exchange will provide market participants certainty with respect to C2 Routing Fees. Further, each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, ORFs and technical costs associated with routing options. The Exchange believes that the proposed non-Customer C2 Routing Fees will enable the Exchange to recover the costs it incurs to route orders to C2 in addition to the flat fee to recoup transaction costs.

The Exchange believes that its proposal to amend the non-Customer C2 Routing Fees from actual transaction charges to a flat rate, in addition to its fixed cost, is equitable and not unfairly discriminatory because the Exchange would uniformly assess the same C2 Routing Fees to all non-Customer market participants. Under its flat fee structure, taking all costs to the Exchange into account, the Exchange may operate at a slight gain or a slight loss for orders routed to and executed at C2. The Exchange believes that its proposed Routing Fees for routing non-Customer orders to C2 are reasonable because they are an approximation of the maximum fees the Exchange will be charged for such executions, including costs. As a general matter, the Exchange believes that the proposed fees will allow it to recoup and cover its costs of providing routing services to C2.

The Exchange believes that its proposal to not pay a rebate to Customers and assess no Customer Routing Fee is reasonable, equitable and not unfairly discriminatory. The Exchange believes that the pricing structure is reasonable because, although not an approximation of the cost of routing to C2, Customer orders will still receive executions free of charge, whereas all other non-Customer routed orders routed to C2 would be assessed a Routing Fee. The Exchange believes that the proposed pricing for Customer orders is equitable and not unfairly discriminatory because it would apply uniformly to all Customer transactions. Participants desiring the rebate offered by C2 can route orders directly in order to take advantage of the rebate. Market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid Routing Fees.

Further, the Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.05 per contract to route orders to NASDAQ OMX away markets (BX Options and PHLX) because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to BX Options and PHLX are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[14] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to BX Options and NOM. It is important to note with respect to routing to an away market that orders are routed based on price first.[15] The Exchange will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) (''NBBO'') price.[16]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance

[6] C2 defines simple orders to exclude ETFs and indexes.

[7] *See* Securities Exchange Act Release No. 68792 (January 31, 2013), 78 FR 8621 (February 6, 2013) (SR–C2–2013–004).

[8] C2 utilizes the following formula to calculate its transaction fees: C2 BBO Market Width at time of execution) × (Market Participant Rate) × 50. The C2 BBO Market Width is the difference between the quoted best offer and best bid in each class on C2 (the displayed C2 ask price minus the displayed C2 bid price). The Market Participant Rates are different rates for different types of market participants, as follows: Market Participant Rate; C2 Market-Maker 30%; Public Customer (Maker) 40%; all other origins 50%. *See* C2's Fees Schedule.

[9] C2 utilizes the following formula to compute rebates for simple, non-complex Public Customer orders in all equity options classes that remove liquidity (i.e. takers): Rebate = (C2 BBO Market Width at time of execution) × (Order Size Multiplier) × 50. The order size multiplier is as follows: 1–10 contracts will be 36%; 11–99 contracts will be 30%; 100–250 contracts will be 20% and 251 plus contracts is 0%. The maximum rebate is capped at $0.75 per contract. *See* C2's Fees Schedule.

[10] Recent pricing changes by C2 will result in a maximum fee of $0.85 per contract for non-Customer orders executed at C2 and rebates or free executions for Customer orders executed at C2.

[11] *See* SR–BATS–2013–012 (not yet published).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Chapter VI, Section 11 of the NASDAQ and BX Options Rules and Phlx Rule 1080(m)(iii)(A).

[15] *See* NASDAQ Rules at Chapter XII (Options Order Protection and Locked and Crossed Market Rules).

[16] *See* NASDAQ Rules at Chapter VI, Section 11(e) (Order Routing).

of the purposes of the Act. The Exchange believes that the rule change would allow the Exchange to recoup its costs when routing orders designated as available for routing by the market participant to C2. Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.[17] Today, other options exchanges also assess similar fees to recoup costs incurred by the Exchange to route orders to away markets. The Exchange routes orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) (''NBBO'') price and based on price first.[18]

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. Accordingly, the fees that are assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those Participants that opt to direct orders to the Exchange rather than competing venues.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[19] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–029 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–029, and should be submitted on or before March 22, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2013–04747 Filed 2–28–13; 8:45 am]

**BILLING CODE 8011–01–P**

[17] *Id.*

[18] *See supra* note 15.

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 8208]**

### Culturally Significant Object Imported for Exhibition Determinations: ''Portrait of Francesco I d'Este''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Portrait of Francesco I d'Este,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Metropolitan Museum of Art, New York, NY, from on or about April 15, 2013, until on or about July 14, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 22, 2013.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2013–04798 Filed 2–28–13; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Delegation of Authority No. 348]**

### Delegation by the Secretary of State to the Assistant Secretary for International Security and Nonproliferation of Authority To Submit Certain Matters to Congress Regarding Implementation of the Additional Protocol

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), the United States Additional Protocol Act, Public Law 109–401 (the Act), and Section 3 of Executive Order 13458, dated February 4, 2008, I hereby delegate to the Assistant Secretary for International Security and Nonproliferation, to the extent authorized by law, the authority to make determinations, certifications, notifications, and reports to the Congress pursuant to:

(1) Sections 251, 252, 253, 272, and 275 of the Act; and

(2) Paragraphs 2, 4, 5, 6, and 7 of Section 3 of the Senate Resolution of Advice and Consent to Ratification of the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America (Senate Resolution).

Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time. Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Arms Control and International Security may at any time exercise any authority or function delegated by this delegation of authority.

This Delegation of Authority does not amend, supersede, or affect the validity of any other delegation of authority dealing with submission of reports to the Congress. This delegation of authority shall be published in the **Federal Register**.

Dated: February 13, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–04708 Filed 2–28–13; 8:45 am]

**BILLING CODE 4710–27–P**

## DEPARTMENT OF STATE

**[Public Notice 8210]**

### Designation of Malang Wazir, Also Known as Wali Mohammed, Also Known as Malang Jan, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Malang Wazir, also known as Wali Mohammed, also known as Malang Jan, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: February 20, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–04811 Filed 2–28–13; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice 8209]**

### Designation of Commander Nazir Group, Also Known as Mullah Nazir Group, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the entity known as Commander Nazir Group, also known as Mullah Nazir Group, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: February 20, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–04814 Filed 2–28–13; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF STATE

**[Public Notice 8211]**

### Designation of Iyad ag Ghali, Also Known as Iyad ag Ghaly, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Iyad ag Ghali, also known as Iyad ag Ghaly, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render

ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: February 20, 2013.

**John F. Kerry,**

*Secretary of State.*

[FR Doc. 2013–04799 Filed 2–28–13; 8:45 am]

**BILLING CODE 4710–10–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2013–0379]**

### Agency Information Collection Activities; Approval of a Currently Approved Information Collection Request: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval. The information collected will be used to help ensure that motor carriers of passengers and property maintain appropriate levels of financial responsibility to operate on public highways.

**DATES:** Please send your comments by April 1, 2013. OMB must receive your comments by this date in order to act on the ICR.

**ADDRESSES:** All comments should reference Federal Docket Management System (FDMS) Docket Number FMCSA–2013–0379. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/Federal Motor Carrier Safety Administration, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ms. Tura Gatling and Gerald Folsom, Ph.D., Office of Registration and Safety Information, Federal Motor Carrier Safety Administration, West Building, 6th Floor, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–385–2405/2412; email *tura.gatling@dot.gov* and *gerald.folsom@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Financial Responsibility for Motor Carrier of Passengers and Motor Carriers of Property.

*OMB Control Number:* 2126–0008.

*Type of Request:* Revision of a currently-approved information collection.

*Respondents:* Insurance and surety companies of motor carriers of property (Forms MCS–90 and MCS–82) and motor carriers of passengers (Forms MCS–90B and MCS–82B).

*Estimated Number of Respondents:* 6,074.

*Estimated Time per Response:* The FMCSA estimates it takes two minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability or three minutes for the Motor Carrier Public Liability Surety Bond; and one minute to place either document on board the vehicle (foreign-domiciled motor carriers only) [49 CFR 387.7(f)]. These endorsements are maintained at the motor carrier's principal place of business [49 CFR 387.7 (iii) (d)].

*Expiration Date:* March 31, 2013.

*Frequency of Response:* Upon creation, change or replacement of an insurance policy or surety bond.

*Estimated Total Annual Burden:* 4,480 hours [(3,874 annual burden hours for Form MCS–90B, Form MCS–90, Form MCS–82B and Form MCS–82) + (606 annual burden hours for placing legible copies of the carrier's Insurance Endorsements or Surety Bonds in the cabs of all vehicles operated in the United States) = 4,480].

**Background**

The Secretary of Transportation is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) For-hire motor carriers of property to cover public liability, property damage and environment restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Forms MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Forms MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier of property or passengers has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carrier of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information enclosed within these documents.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

Issued on: February 21, 2013.

**G. Kelly Leone,**

*Associate Administrator for Office of Research and Information Technology And Chief Information Officer.*

[FR Doc. 2013–04760 Filed 2–28–13; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 991 (Sub-No. 1X)]**

### Yellowstone Valley Railroad, L.L.C.—Discontinuance of Lease and Trackage Rights Operations Exemption—In Richland, Sheridan, Roosevelt, and Daniels Counties, Mont., and McKenzie County, ND

On February 11, 2013, Yellowstone Valley Railroad, L.L.C. (YVRR) [1] filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903, to discontinue YVRR's lease operations over two lines owned by BNSF Railway Company (BNSF) between: (1) Milepost 43.0, in Crane, Mont., and milepost 78.6, near Snowden, Mont.; and (2) milepost 0.93, near Bainville, Mont., and milepost 100.3, near Scobey, Mont. Additionally, YVRR seeks to discontinue its overhead trackage rights on two other BNSF lines between: (1) Milepost 78.6, on the BNSF Sidney Subdivision near Snowden, and milepost 0.93, on the BSNF Scobey Subdivision, near Bainville; and (2)

[1] According to YVRR, its name was formerly Yellowstone Valley Railroad, Inc. *See Watco Holdings—Corp. Family Transaction,* FD 35439 (STB served Nov. 4, 2010).

milepost 6.0, near Glendive, Mont., and milepost 0.0, at Glendive.[2] The lines traverse U.S. Postal Service Zip Codes 59212, 59217, 59221, 59222, 59226, 59330, 59242, 59247, 59254, 59257, 59258, 59263, and 59270.

In 2011, YVRR received authority to discontinue service between milepost 6.0, near Glendive, and milepost 43.0, at Crane.[3] For that reason, YVRR states that it no longer needs the overhead trackage rights south of milepost 6.0. Accordingly, YVRR seeks authority to discontinue those rights between milepost 6.0, near Glendive, and milepost 0.0, at Glendive.

YVRR seeks to discontinue operations over the leased lines so that BNSF can once again resume operations over those lines. Once service is discontinued over the leased lines, YVRR states that it will no longer have any need for the overhead trackage rights between milepost 78.6, on the BNSF Sidney Subdivision near Snowden, and milepost 0.93, on the BNSF Scobey Subdivision, near Bainville. After the requested discontinuance is granted, YVRR will continue to operate as a common carrier performing transload and terminal switching operations on tracks it owns in Dore, ND.[4]

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 31, 2013.[5]

Because this is a discontinuance and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8(b).

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB 991 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Karl Morell, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before March 21, 2013.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: February 26, 2013.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–04793 Filed 2–28–13; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. EP 558 (Sub-No. 16)]**

### Railroad Cost of Capital—2012

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of decision instituting a proceeding to determine the railroad industry's 2012 cost of capital.

**SUMMARY:** The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2012. The decision solicits comments on the following issues: (1) The railroads' 2012 current cost of debt capital; (2) the railroads' 2012 current cost of preferred equity capital (if any); (3) the railroads' 2012 cost of common equity capital; and (4) the 2012 capital structure mix of the railroad industry on a market value basis. Comments should focus on the various cost of capital components listed above using the same methodology followed in *Railroad Cost of Capital—2011,* EP 558 (Sub-No. 15) (STB served Sept. 13, 2012).

**DATES:** Notices of intent to participate are due by March 29, 2013. Statements of the railroads are due by April 19, 2013. Statements of other interested persons are due by May 10, 2013. Rebuttal statements by the railroads are due by May 31, 2013.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing system or in the traditional paper format. Any person using e-filing should comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 558 (Sub-No. 16), 395 E Street SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Board's decision is posted on the Board's Web site, *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment of the conservation of energy resources.

**Authority:** 49 U.S.C. 10704(a).

Decided: February 25, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2013–04728 Filed 2–28–13; 8:45 am]

**BILLING CODE 4915–01–P**

[2] YVRR acquired the lease over the lines and the overhead trackage rights in 2005. *See Yellowstone Valley R.R.—Lease and Operation Exemption—BNSF Ry.,* FD 34737 (STB served Sept. 1, 2005).

[3] *See Yellowstone Valley R.R.—Discontinuance of Service Exemption—In Dawson and Richland Cntys., Mont.,* AB 991X (STB served June 28, 2011).

[4] YVRR asserts that it constructed these tracks as team tracks while leasing the lines from BNSF and that it did not need Board authority for this project under 49 U.S.C. 10906.

[5] YVRR asks the Board to act expeditiously. The carrier fears that it will soon start to lose employees as a result of this discontinuance filing, which in turn will impair its ability to provide service.


# FEDERAL REGISTER

Vol. 78 Friday,
No. 41 March 1, 2013

Part II

## Federal Communications Commission

47 CFR Part 54
Rural Health Care Support Mechanism; Final Rule

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[WC Docket No. 02–60; FCC 12–150]**

### Rural Health Care Support Mechanism

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission reforms its universal service support program for health care, transitioning its existing Internet Access and Rural Health Care Pilot programs into a new, efficient Healthcare Connect Fund. This Fund will expand health care provider access to broadband, especially in rural areas, and encourage the creation of state and regional broadband health care networks. Access to broadband for medical providers saves lives while lowering health care costs and improving patient experiences.

**DATES:** Effective April 1, 2013, except for added §§ 54.601(b), 54.631(a) and (c), 54.632, 54.633(c), 54.634(b), 54.636, 54.639(d), 54.640(b), 54.642, 54.643, 54.645, 54.646, 54.647, 54.648(b), 54.675(d), and 54.679, and the amendments to §§ 54.603(a) and (b), 54.609(d)(2), 54.615(c), 54.619(a)(1) and (d), and 54.623(a), which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

**FOR FURTHER INFORMATION CONTACT:** Linda Oliver, Wireline Competition Bureau at (202) 418–1732 or TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order (*Order)* in WC Docket No. 02–60, FCC 12–150, adopted December 12, 2012, and released December 21, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554, or at the following Internet address: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-150A1.doc.* The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.*

#### I. Introduction

1. In this *Order,* the Commission reforms our universal service support programs for health care, transitioning our existing Internet Access and Rural Health Care Pilot programs into a new, efficient Healthcare Connect Fund (Fund). This Fund will expand health care provider (HCP) access to broadband, especially in rural areas, and encourage the creation of state and regional broadband health care networks. Broadband connectivity has become an essential part of 21st century medical care. Whether it is used for transmitting electronic health records, sending X-rays, MRIs, and CAT scans to specialists at a distant hospital, or for video conferencing for telemedicine or training, access to broadband for medical providers saves lives while lowering health care costs and improving patient experiences. Telemedicine can save stroke patients lasting damage, prevent premature births, and provide psychiatric treatment for patients in rural areas. Exchange of electronic health records (EHRs) avoids duplicative medical tests and errors in prescriptions, and gives doctors access to all of a patient's medical history on a moment's notice. Telehealth applications save HCPs money as well. For example, a South Carolina HCP consortium funded by the Commission's Rural Health Care (RHC) Pilot Program saved $18 million in Medicaid costs through telepsychiatry provided at hospital emergency rooms. Another Pilot project in the Midwest saved $1.2 million in patient transport costs after establishing an electronic intensive care unit (e-ICU) program.

2. This *Order* builds on the success of the RHC Pilot Program. That program demonstrated the importance of expanding HCP access to high-capacity broadband services, which neither the existing RHC Telecommunications Program nor the Internet Access Program have successfully achieved. The Pilot Program also proved the benefits of a consortium-focused program design, encouraging rural-urban collaboration that extended beyond mere connectivity, while significantly lowering administrative costs for both program participants and the Fund. The Pilot Program funds 50 different health care provider broadband networks, with a total of 3,822 individual HCP sites, 66 percent of which are rural. The networks range in size from 4 to 477, and have received a total of $364 million in funding commitments, to be spread out over several years. Through bulk buying and competitive bidding, most HCPs in the program have been able to obtain broadband connections of 10 Mbps or more. The consortia were often organized and led by large hospitals or medical centers, which contributed administrative, technical, and medical resources to the other, smaller HCPs providing service to patients in rural areas.

3. Drawing on these lessons, the Healthcare Connect Fund will direct Universal Service Fund (USF) support to high-capacity broadband services while encouraging the formation of efficient state and regional health care networks. The new Fund will give HCPs substantial flexibility in network design, but will require a rigorous, auditable demonstration that they have chosen the most cost-effective option through a competitive bidding process.

4. In particular, like the Pilot Program, the Healthcare Connect Fund will permit HCPs to purchase services and construct their own broadband infrastructure where it is the most cost-effective option. The Healthcare Connect Fund is thus a hybrid of the separate infrastructure and services programs proposed in the Commission's July 2010 *Notice of Proposed Rulemaking* (NPRM), 75 FR 48236, August 9, 2010. The self-construction option will only be available, however, to HCPs that apply as part of consortia, which can garner economies of scale unavailable to individual providers. With these safeguards, and based on the experience of the RHC Pilot Program, we expect the self-construction option to be used only in limited circumstances, and often in combination with services purchased from commercial providers.

5. Regardless of which approach providers choose, the Healthcare Connect Program will match two-for-one the cost of broadband services or facilities that they use for health care purposes, requiring a 35 percent HCP contribution. A two-for-one match will significantly lower the barriers to connectivity for HCPs nationwide, while also requiring all program participants to pay a sufficient share of their own costs to incent considered and prudent decisions and the choice of cost-effective broadband connectivity solutions. Indeed, with the level of support the Healthcare Connect Fund provides, and with the other reforms we adopt, we expect that HCPs will be able to obtain higher speed and better quality broadband connectivity at lower prices, and that the value for the USF will be greater, than in the existing RHC

Telecommunications and Internet Access Programs.

6. Both rural and non-rural HCPs will be allowed to participate in the new program, but non-rural providers may join only as part of consortia. Moreover, to ensure that all consortia keep rural service central to their mission, we will require that a majority of the HCPs in each consortium meet our longstanding definition of rural HCPs, although we grandfather those Pilot projects with a lower rural percentage. And to ensure that the program maintains its focus on smaller HCPs that serve predominantly rural populations, we also adopt a rule limiting support to no more than $30,000 per year for recurring charges and no more than $70,000 for non-recurring charges over a five-year period for larger HCPs—defined as hospitals with 400 beds or more.

7. We also adopt a number of reforms for the Healthcare Connect Fund that will increase the efficiency of the program, both by reducing administrative costs for applicants and for Universal Service Administrative Company (USAC), and by adopting measures to maximize the value obtained by HCPs from every USF dollar. In particular, we take a number of steps in this *Order* to simplify the application process, both for individual HCP applicants and for consortia of HCPs.

8. As a central component of this *Order,* we also adopt express goals and performance measures for all the Commission's health care support mechanisms. The goals are (1) increasing access to broadband for HCPs, particularly those serving rural areas; (2) fostering the development and deployment of broadband health care networks; and (3) maximizing the cost-effectiveness of the program. These goals inform all the choices we make in this *Order.* As we implement this *Order,* we will collect information to evaluate the success of our program against each of these goals.

9. Finally, we create a new Pilot Program to test whether it is technically feasible and economically reasonable to include broadband connectivity for skilled nursing facilities within the Healthcare Connect Program. The Pilot will make available up to $50 million to be committed over a three-year period for pilot applicants that propose to use broadband to improve the quality and efficiency of health care delivery for skilled nursing facility patients, who stand to benefit greatly from telemedicine and other telehealth applications. We expect to use the data gathered through the Pilot to determine how to proceed on a permanent basis with respect to such facilities, which provide hospital-like services.

10. We note that, with this comprehensive reform of the RHC program, the Commission has now reformed all four USF distribution programs within the past three years. In September 2010, the Commission modernized the Schools and Libraries support mechanism (E-rate) for the 21st century, improving broadband access, streamlining administrative requirements, and taking measures to combat waste, fraud and abuse. In October 2011, the Commission adopted transformational reforms of the high-cost program, creating the Connect America and Mobility Funds to advance the deployment of fixed and mobile broadband networks in rural and underserved areas, while putting the high-cost program on an overall budget for the first time ever. In January 2012, the Commission transformed the low-income program, taking major steps to modernize the program and reduce waste, fraud, and abuse. In each prior instance, and again in this *Order,* we have made our touchstone aligning the universal service programs with 21st century broadband demands, while improving efficiency, accountability, and fiscally responsibility.

## II. Performance Goals and Measures

11. Clear performance goals and measures will enable the Commission to determine whether the health care universal service support mechanism is being used for its intended purpose and whether that funding is accomplishing the intended results. In the *NPRM,* the Commission recognized the importance of establishing measurable performance goals, stating that ''[i]t is critical that our efforts focus on enhancing universal service for health care providers and that support is properly targeted to achieve defined goals.'' Establishing performance goals and measures also is consistent with the Government Performance and Results Act of 1993 (GPRA), which requires federal agencies to engage in strategic planning and performance measurement. In its 2010 report, the Government Accountability Office (GAO) also emphasized that the Commission should provide the RHC support mechanism with ''a solid performance management foundation'' by ''establishing effective performance goals and measures, and planning and conducting effective program evaluations.''

12. Drawing on the Commission's experience with the existing RHC programs and the Pilot Program, and based on the record developed in this proceeding, we adopt the following performance goals for the health care universal service support mechanism (both for the RHC Telecommunications Program and the Healthcare Connect Fund), which reflect our ongoing commitment to preserve and advance universal service for eligible HCPs: (1) Increase access to broadband for HCPs, particularly those serving rural areas; (2) foster development and deployment of broadband health care networks; and (3) reduce the burden on the USF by maximizing the cost-effectiveness of the health care support mechanism. We also adopt associated performance measurements. Throughout this *Order,* we have used these goals as guideposts in developing the Healthcare Connect Fund, and these goals also will guide our action as we undertake any future reform of the Telecommunications Program.

13. Using the adopted goals and measures, the Commission will, as required by GPRA, monitor the performance of the universal service health care support mechanism. If the program is not meeting the performance goals, we will consider corrective actions. Likewise, to the extent that the adopted measures do not help us assess program performance, we will revisit them as well.

### *A. Increase Access to Broadband for Health Care Providers, Particularly Those Serving Rural Areas*

14. Goal. We adopt as our first goal increasing access to broadband for HCPs, particularly those serving rural areas. This goal implements Congress's directive in section 254(h) of the Communications Act that the Commission ''enhance access to advanced telecommunications services and information services'' for eligible HCPs and to provide telecommunications services necessary for the provision of health care in rural areas at rates reasonably comparable to similar services in urban areas. Access to the broadband necessary to support telehealth and Health IT applications is critical to improving the quality and reducing the cost of health care in America, particularly in rural areas. Broadband enables the efficient exchange of patient and treatment information, reduces geography and time as barriers to care, and provides the foundation for the next generation of health innovation.

15. Measurement. We will evaluate progress towards our first goal by measuring the extent to which program participants are subscribing to increasing levels of broadband service over time. We also plan to collect data about participation in the Healthcare

Connect Fund relative to the universe of eligible participants. We also will collect data about the bandwidth obtained by participants in the program, and will chart the increase over time in higher bandwidth levels. We plan to compare those bandwidth levels with the minimum bandwidth requirements recommended in the *National Broadband Plan,* March 16, 2010 and the *OBI Technical Paper,* August, 2010 to determine how HCP access to broadband evolves as technology changes and as HCPs increasingly adopt telemedicine and electronic health records. We also expect to measure the bandwidth obtained by HCPs in the different statutory categories, as that information is not administratively burdensome to collect. To the extent feasible, we also will endeavor to compare the bandwidth obtained by participants in the Commission's programs with that used by non-participants, by relying on public sources of information regarding broadband usage by the health care industry, and by comparing the bandwidth obtained by new participants in the Commission's programs with what they were using prior to joining, to the extent such data is available.

16. HCP needs for higher bandwidth connections vary based on the types of telehealth applications used by HCPs and by the size and nature of their medical practices. Because of this variation, and because of potential constraints on the ability of HCPs to obtain broadband (due to cost or lack of broadband availability), we are not establishing a minimum target bandwidth as a means to measure progress toward this goal. We expect, nevertheless, to compare the bandwidth obtained by HCPs with the kinds of bandwidth commonly required to conduct telemedicine and other telehealth activities.

17. We direct the Bureau to consult with the major stakeholders and other governmental entities in order to minimize the administrative burden placed on applicants and on the Fund Administrator (currently, USAC). We also direct the Bureau to consult with the U.S. Department of Health and Human Services (HHS), including the Indian Health Service (IHS), and other relevant federal agencies to ensure the meaningful and non-burdensome collection of broadband data from HCPs. We expect to follow health care trends (such as use of EHRs and telemedicine) and to coordinate, to the extent possible, our monitoring efforts with other federal agencies. We also direct the Bureau to engage in dialogue with United States Department of Health and Human Services (HHS) regarding whether and how to incorporate broader health care outcomes, including providers' ''meaningful use'' of EHRs, into our performance goals and measures in the future, consistent with our statutory authority.

18. Finally, in order to further our progress toward meeting this goal, we also direct the USAC, working with the Bureau and with other agencies, to conduct outreach regarding the Healthcare Connect Fund with those HCPs that are most in need of broadband in order to reach ''meaningful use'' of EHRs and for other health care purposes.

*B. Foster Development and Deployment of Broadband Health Care Networks*

19. Goal. We adopt as our second goal fostering development and deployment of broadband health care networks, particularly networks that include HCPs that serve rural areas. This goal is consistent with the statutory objective of section 254(h), which is to enhance access to telecommunications and advanced services, especially for health care providers serving rural areas. Broadband health care networks also improve the quality and lower the cost of health care and foster innovation in telehealth applications, particularly in rural areas.

20. Measurement. We will evaluate progress towards this second goal by measuring the extent to which eligible HCPs participating in the Healthcare Connect Fund are connected to other HCPs through broadband health care networks. We plan to collect data about the reach of broadband health care networks supported by our programs, including connections to those networks by eligible and non-eligible HCP sites. We also will measure how program participants are using their broadband connections to health care networks, including whether and to what extent HCPs are engaging in telemedicine, exchange of EHRs, participation in a health information exchange, remote training, and other telehealth applications. Access to high speed broadband health care networks should help facilitate adoption of such applications by HCPs, including those HCPs serving patients in rural areas. We direct the Bureau to work with USAC to implement the reporting requirements regarding such telehealth applications in a manner that imposes the least possible burden on participants, while enabling us to measure progress toward this goal. We also direct the Bureau to coordinate with other federal agencies to ensure that data collection minimizes the burden on HCPs, which may already be required to track similar data for other health care regulatory purposes. To the extent feasible, we also will endeavor to compare the extent to which participants in the new program are using telehealth applications to that of non-participants, relying on public sources of information regarding trends in the health care industry.

*C. Maximize Cost-Effectiveness of Program*

21. Goal. We adopt as our third goal maximizing the cost-effectiveness of the RHC universal service health care support mechanism, thereby minimizing the Fund contribution burden on consumers and businesses. This goal includes increasing the administrative efficiency of the program (thereby conserving Fund dollars) while accelerating the delivery of support for broadband. This goal also includes ensuring that the maximum value is received for each dollar of universal service support provided, by promoting lower prices and higher speed in the broadband connections purchased with Fund support. In addition, we seek to ensure that funding is being used consistent with the statute and the objectives of the RHC support mechanism, and we adopt throughout this *Order* measures to help prevent waste, fraud and abuse. The goal of increasing program efficiency is consistent with section 254(h)(2)(A) of the Communications Act, which requires that support to HCPs be ''economically reasonable.''

22. Measurement. We will evaluate progress towards this goal both by measuring the administrative efficiency of the program and by measuring the value delivered with each dollar of USF support. First, we will measure the cost of administering the program compared to the program funds disbursed to recipients. USAC's cost to administer the Telecommunications, Internet Access, and Pilot RHC programs was nine percent of total funds disbursed in calendar year 2011, the highest of all four universal service programs. We may measure this also in terms of the percentage of administrative expenses relative to funds committed, to account for the fact that administrative expenses may be higher in years in which USAC processes a large number of applications for multi-year funding.

23. Second, we will measure the value delivered to HCPs with support from the Healthcare Connect Fund by tracking the prices and speed of the broadband connections supported by the program. As we found in the Pilot Program, consortium applications, in combination with competitive bidding

and other program features, lead to lower prices and higher speed broadband. As we did in the *Pilot Evaluation,* DA 12–1332, we expect to measure the prices and speed of connections obtained under the Healthcare Connect Fund to determine whether this goal has been accomplished, and will examine similar data from the Telecommunications Program. In addition, we will monitor the results of the Administrator's audits and other reports to track progress in reducing improper payments and waste, fraud and abuse.

## III. Support for Broadband Connectivity

### *A. Overview*

24. In this *Order,* we create a new Healthcare Connect Fund that will provide universal service support for broadband connectivity for eligible HCPs. As designed, the new program will achieve the goals we have identified above for the reformed program: (1) Increasing access to broadband for HCPs, including those in rural areas; (2) fostering the development of broadband health care networks to deliver innovation in telehealth applications; and (3) maximizing the cost-effective use of the Fund. The Healthcare Connect Fund replaces the current RHC Internet Access Program, but the RHC Telecommunications Program remains in place.

25. Although we will allow the filing of both individual and consortium applications, a primary focus of the Healthcare Connect Fund will be encouraging the growth or formation of statewide, regional, or Tribal broadband health care networks that will expand the benefits we observed in the Pilot Program. Benefits of such networks include access to specialists; cost savings from bulk buying capability and aggregation of administrative functions; efficient network design; and the transfer of medical, technical, and financial resources to smaller HCPs. We will allow non-rural as well as rural health care providers to participate and receive support for critical network connections if they apply as part of a consortium, with limitations to ensure that program funds are used efficiently and that all consortia include rural participation.

26. In the *NPRM,* the Commission proposed to create two separate programs: A Health Infrastructure Program and a Broadband Services Program. The former would support the construction of HCP-owned broadband networks; the latter would support the purchase of broadband services. In view of the real world experience we have gained from the Pilot Program over the intervening two years, and based on the extensive record in this docket from a broad array of affected stakeholders, we now conclude that the better approach is to adopt a single, hybrid program. The new program will support the cost of (1) broadband and other advanced services; (2) upgrading existing facilities to higher bandwidth; (3) equipment necessary to create networks of HCPs, as well as equipment necessary to receive broadband services; and (4) HCP-owned infrastructure where shown to be the most cost-effective option. The hybrid approach of the Healthcare Connect Fund provides flexibility for HCPs to create broadband networks that best meet their needs and that can most readily be put to use for innovative and effective telehealth applications, while ensuring funds are spent responsibly and efficiently. The new program will replace the current Internet Access Program and provide continuing support for Pilot Program consortia as they exhaust any remaining funding already committed under the Pilot Program. As discussed in the Implementation Timeline section, for administrative convenience, rural HCPs can continue to participate in the Internet Access Program during funding year 2013.

27. We expect that most HCPs will choose to obtain services from commercial providers rather than construct and own network facilities themselves, just as they did in the Pilot Program. HCP-owned infrastructure will be supported under the Healthcare Connect Fund only when the HCP or HCP consortium demonstrates, following a competitive bidding process that solicits bids for both services and construction, either that the needed broadband is unavailable or that the self-construction approach is the most cost-effective option. We also impose an annual cap of $150 million that will apply, in part, to the funds available for HCP self-construction, to ensure that ample funding will remain available for HCPs choosing to obtain services.

28. To promote fiscal responsibility and cost-effective purchasing decisions, we adopt a single, uniform 35 percent HCP contribution requirement for all services and infrastructure supported through the program. Use of a single, flat rate will facilitate network applications, encourage efficient network design, and reduce administrative expenses for applicants and the Fund. In requiring a 35 percent contribution, we balance the need to provide appropriate incentives to encourage resource-constrained HCPs to participate in health care broadband networks, while requiring HCPs to have a sufficient financial stake to ensure that they obtain the most cost-effective services possible. We also find that a 35 percent contribution requirement is economically reasonable and fiscally responsible, given the $400 million cap for the health care support mechanism and the anticipated demand for program support.

29. We adopt the Healthcare Connect Fund pursuant to section 254(h)(2)(A) of the Communications Act, which requires the Commission to ''establish competitively neutral rules to * * * enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit * * * health care providers.'' The Commission relied on this statutory authority when it created the Pilot Program in 2006 to support HCP-owned infrastructure and services, including Internet access services, and the Commission has broad discretion regarding how to fulfill this statutory mandate. In *Texas Office of Public Utility Counsel* v. *FCC,* the United States Court of Appeals for the Fifth Circuit upheld the Commission's authority under section 254(h)(2)(A) to provide universal service support for ''advanced services'' to both rural and non-rural HCPs.

### *B. A Consortium Approach to Creation of Broadband Health Care Networks*

30. The flexible, consortium-based approach of the Pilot Program fostered a wide variety of health care broadband networks that enabled better care and lowered costs. Drawing on our Pilot Program experience, we implement a Healthcare Connect Fund that will encourage HCPs to work together to preserve and advance the development of health care networks across the country. The measures we adopt will simplify the application process for consortia of HCPs and afford them flexibility to innovate in the design and use of their networks, recognizing the importance of enabling smaller HCPs to draw on the medical and technical expertise and administrative resources of larger HCPs.

31. We conclude that non-rural HCPs may apply and receive support as part of consortia in the Healthcare Connect Fund. To ensure that program support continues to benefit rural as well as non-rural HCPs, however, we require that in each consortium, a majority of HCP sites (over 50 percent) be rural HCPs. We also adopt measures to limit the amount of funding that flows to the

largest hospitals in the country, to ensure that funding remains focused on a broad cross section of providers serving smaller communities across America.

32. Separately, we describe the services and equipment eligible for support (including services and equipment necessary for networks), and we describe the funding process, including the requirements applicable to consortia.

1. Key Benefits of a Consortium Approach

33. Discussion. The *Pilot Evaluation* documented in detail the benefits from the flexible consortium-based approach used in the Pilot Program, including:

- *Administrative Cost Savings:* Applying as a consortium is simpler, cheaper, and more efficient for the HCPs and for the Fund. Under the consortium approach, the expenses associated with planning the network, applying for funding, issuing RFPs, contracting with service providers, and invoicing are shared among a number of providers. Consortium applications also allow USAC to process applications more efficiently.
- *Access to Medical Specialists through Telemedicine.* Consortia that include both larger medical centers and members that serve more sparsely populated areas enable the latter to obtain access to medical specialists through telemedicine, thus improving the quality and reducing the cost of care.
- *Leadership of Consortia.* The organizers and leaders of many Pilot projects classified as non-rural entities under the Commission's longstanding definition of rural HCPs—especially hospitals and university medical centers—were able to shoulder much of the administrative burden associated with the consortia, thereby benefiting smaller, rural HCPs.
- *Sources of Technical Expertise.* Larger sites often have the technical expertise necessary to design networks and manage the IT aspects of the network, and also often have greater expertise than smaller providers in rural areas in telemedicine, electronic health records, Health IT, computer systems, and other broadband telehealth applications.
- *Financial Resources.* Many Pilot projects depend on the financial and human resources of larger sites to absorb the administrative costs of participation in the Pilot, such as the cost of planning and organizing applications, applying for funding, preparing RFPs, contracting for services, and implementing the projects.
- *Efficiency of Network Design.* Network design in many cases has been more efficient and less costly in the Pilot Program than in the Telecommunications Program, because the Pilot Program funds all public and not-for-profit HCPs, even those located in non-rural areas. Pilot projects were able to design their networks with maximum network efficiency in mind because funding is not negatively impacted by inclusion of non-rural sites in those networks.
- *Bulk Buying Capability.* Consortium bulk buying capability, when combined with competitive bidding and multi-year funding commitments, enabled Pilot projects to obtain higher bandwidth, lower rates, and better service quality than would otherwise have been possible.

34. Commenters generally support a consortium approach and agree that it can provide a number of benefits, including better pricing and administrative efficiency.

35. In light of these benefits, we adopt a number of rules to encourage HCPs to work together in consortia to meet their broadband connectivity needs. We conclude that non-rural HCPs may participate and receive support as part of consortia, with some limitations. We also adopt a ''hybrid'' approach that allows consortia to receive support through a single program for services and, where necessary, self-construction of infrastructure. We adopt a uniform HCP contribution percentage applicable to all HCPs and to all funded costs to simplify administration. We adopt additional measures. We make support for certain costs available only to consortia—*e.g.,* upfront payments for build-out costs and indefeasible rights of use (IRUs), equipment necessary for the formation of networks, and self-construction charges. We also allow consortia to submit a single application covering all members, and we provide additional guidance based on Pilot Program experience for consortium applications. Finally, we facilitate group buying arrangements by providing for multi-year commitments and allowing HCPs to ''opt into'' competitively bid master service agreements previously approved by USAC or other federal, state, Tribal, or local government agencies, without undergoing additional competitive bidding solely for the purposes of receiving Healthcare Connect Fund support.

2. Eligibility To Participate in Consortia

36. Discussion. We will allow participation in the Healthcare Connect Fund consortia by both rural and non-rural eligible HCPs, but with limitations to ensure that the health care support mechanism continues to serve rural as well as non-rural needs in the future. The Pilot Program provided support to both rural and non-rural HCPs under section 254(h)(2)(A), which directs the Commission to ''enhance * * * access to advanced telecommunications and information services for *all* public and non-profit * * * health care providers.'' As the Fifth Circuit has found, ''the language in section 254(h)(2)(A) demonstrates Congress's intent to authorize expanding support of 'advanced services,' when possible, for non-rural health providers.''

37. We expect that including non-rural HCPs in consortia will provide significant health care benefits to both rural and non-rural patients, for at least three reasons.

- First, even primarily rural networks benefit from the inclusion of larger, non-rural HCPs. Pilot projects state that rural HCPs value their connections to non-rural HCPs for a number of reasons, including access to medical specialists; help in instituting telemedicine programs; leadership; administrative resources; and technical expertise. Many non-rural HCPs in the Pilot Program devoted resources to organizing consortia, preparing applications, designing networks, and preparing requests for proposal (RFPs). Had these non-rural HCPs not been eligible for support, they might not have been willing to take on a leadership role, which in turn directly enabled smaller and more rural HCPs to participate in Pilot networks. The participation of non-rural sites has also led to better prices and more broadband for participating rural HCPs, due to the greater bargaining power of consortia that include larger, non-rural sites.
- Second, the Commission's longstanding definition of ''non-rural'' HCPs encompasses a wide range of locales, ranging from large cities to small towns surrounded by rural countryside. Even within areas that are primarily rural, HCPs are likely to be located in the most populated areas. Many HCPs that are technically classified as non-rural within our rules in fact are located in relatively sparsely populated areas. For example, Orangeburg County Clinic in Holly Hill, South Carolina (population 1,277), a HCP participating in Palmetto State Providers Network's Pilot project, is characterized as non-rural. The largest cities closest to Holly Hill are Charleston, SC, and Columbia, SC, which are respectively 50 and 69 miles away from Holly Hill. Moreover, even those hospitals and clinics that are located in more densely populated

towns directly serve rural populations because they are the closest HCP for many patients who do live in the surrounding rural areas. For example, the University of Virginia Medical Center is a major referral center for many counties in rural Appalachia.

• Third, even hospitals and clinics that are located in truly urban areas are able to provide significantly improved care by joining broadband networks. The California Telehealth Network, for example, states that it ''frequently encounters urban health care providers with patient populations that are as isolated from clinical specialty care as [the] most rural health care providers,'' including urban Indian HCPs who could better serve Native populations through broadband-centered technologies such as EHRs and telemedicine. In some areas of the country, even ''urban'' communities may be hundreds of miles away from critical health care services such as Level 1 Trauma Centers, academic health centers, and children's hospitals. Like HCPs in rural areas, these ''urban'' community hospitals may serve as ''spoke'' health care facilities that access services that are available at larger hospital ''hubs.'' Eligible public and not-for-profit HCPs located in communities that are not classified as ''rural'' thus have a need for access to broadband to be able to effectively deliver health care, just as their ''rural'' counterparts do.

38. Some commenters express concern that unlimited non-rural HCP participation might jeopardize funding for rural HCPs if the $400 million annual program cap is reached. We therefore adopt three simple limitations that should help ensure a fiscally responsible reformed health care program without unduly restricting non-rural participation, consistent with our statutory mandate to enhance access to advanced services in an ''economically reasonable'' manner. First, non-rural HCPs may only apply for support as part of consortia that include rural HCPs; that is, they may not submit individual applications. Second, non-rural HCPs may receive support only if they participate in consortia that include a majority (more than 50 percent) of sites that are rural HCPs. The majority rural requirement must be reached by a consortium within three years of the filing date of its first request for funding (Form 462) in the Healthcare Connect Fund. Third, we establish a cap on the annual funding available to each of the largest hospitals participating in the program (those with 400 or more beds). These requirements will encourage the formation of health care *networks* that include rural HCPs, while generating administrative and pricing efficiencies as well as significant telemedicine and other telehealth benefits.

39. For purposes of the majority rural requirement, we ''grandfather'' non-rural HCP sites that have received a funding commitment through a Pilot project that has 50 percent or more non-rural HCP sites with funding commitments as of the adoption date of this *Order.* Such non-rural HCP sites may continue to receive support through the Healthcare Connect Fund, but unless the consortium overall reaches majority rural status overall, the project may add new non-rural HCP sites only if, in the aggregate, the new (*i.e.,* non-Pilot project) HCP sites remain majority rural. The grandfathering only applies to the sites that have received a Pilot Program funding commitment as of the adoption date of this *Order,* and applies only so long as the grandfathered non-rural HCP site continues to participate in that consortium.

40. We recognize that large, metropolitan non-profit hospitals are more likely to provide specialized services and expertise that HCPs and patients in less populous areas (both rural and non-rural) may otherwise be unable to access, and that may serve a leadership role under which they provide significant, often unreimbursed assistance to other HCPs within the network. Thus, we see significant value in having such hospitals participate in health care broadband networks. At the same time, however, large metropolitan hospitals are located in urban areas where broadband is typically less expensive than in rural areas. Given that universal service funds are limited, we expect larger hospitals to structure their participation in Healthcare Connect Fund consortia in a way that appropriately serves the goals of the health care program to *increase* HCP access to broadband services and health care broadband networks. In other words, it would not be economically reasonable to provide support to larger hospitals for connections they would have purchased in any event, outside of their participation in the consortium.

41. To protect against larger HCPs in non-rural areas joining the program merely to obtain support for pre-existing connections, we require consortium applicants to describe in their applications the goals and objectives of the proposed network and their strategy for aggregating HCP needs, and to use program support for the described purposes. We also impose a limitation on the amount of funding available to large metropolitan hospitals, while recognizing that it is unlikely in the near term that large urban hospitals will consume a disproportionate amount of funds in the Healthcare Connect Fund. We require that under the Healthcare Connect Fund, a non-rural hospital site with 400 or more licensed patient beds may receive no more than $30,000 per year in support for recurring charges and no more than $70,000 in support for nonrecurring charges every 5 years under the Fund, exclusive in both cases of costs shared by the network. For purposes of this limit, we ''grandfather'' non-rural hospitals that have received a funding commitment through a Pilot project as of the adoption date of this *Order.* We base the amount of these caps on the average charges that were supported for non-rural hospitals in the Pilot Program. The American Hospital Association (AHA) defines ''large'' hospitals as those with 400 or more staffed patient beds. We will use the AHA classification as a guide for our own definition of a ''large'' hospital, which is any non-rural hospital with 400 or more licensed patient beds. Based on our experience with the Pilot Program, it appears that the vast majority of Pilot participant hospitals have fewer than 200 beds. We do not anticipate, therefore, that the funding caps for large hospitals that we adopt here will be likely to affect most of the hospitals that are likely to join consortia in the Healthcare Connect Fund. We will monitor use of support by large hospitals closely in the new program, and if it appears that such hospitals are utilizing a disproportionate share of program funds despite our caps, we may consider more explicit prioritization rules to ensure that program dollars are targeted to the most cost-effective uses. We plan to conduct a further proceeding to examine possible approaches to prioritizing funding.

42. We expect that, on average, the actual number of rural members in the consortia will be substantially higher than 51 percent, as was the case in the Pilot Program, and we will evaluate this over time. We will not begin receiving applications from new consortia until 2014, and based on our experience with the Pilot Program, we know that it may take some time for consortia to organize themselves and apply for funding. We therefore direct the Bureau to report to the Commission on rural participation by September 15, 2015. If we observe that the trend of rural participation in the new program does not appear to be on a comparable path as we observed in the Pilot Program (where average rural participation reached 66 percent), we will open, by the end of 2015, a

proceeding to expeditiously re-evaluate the participation requirement.

43. We emphasize that the limitations do *not* prevent any non-rural HCP from *participating* in a health care broadband network; entities ineligible for support may participate in networks if they pay their ''fair share'' (*i.e.* an ''undiscounted'' rate) of network costs. Non-profit entities, including non-rural HCPs, may also serve as consortium leaders even if they do not receive universal service support.

44. In light of the limitations, we do not anticipate that our decision to allow both rural and non-rural HCPs to receive support through the Healthcare Connect Fund will cause program demand to exceed the $400 million cap in the foreseeable future, especially in light of our decision to require a 35 percent participant contribution and our adoption of a $150 million annual cap on support for upfront payments and multi-year commitments. Furthermore, the pricing and other efficiencies made possible through group purchasing should drive down the cost of connections as some Telecommunications Program participants migrate to the Healthcare Connect Fund. We will closely monitor program demand, and stand prepared to consider whether additional program changes are necessary, including, establishing rules that would give funding priority to certain HCPs.

3. Eligibility of Grandfathered Formerly ''Rural'' Sites

45. In June 2011, the Commission adopted an interim rule permitting participating HCPs that were located in a ''rural'' area under the definition used by the Commission before July 1, 2005, to continue being treated as if they were located in a ''rural'' area for the purposes of determining eligibility for support under the RHC program. We conclude that HCPs that were located in ''rural areas'' under the pre-July 1, 2005 definition used by the Commission, and that were participating in the Commission's RHC program before July 2005, also will be treated as ''rural'' for purposes of the new Healthcare Connect Fund. Many such facilities play a key role in providing health care services to rural and remote areas, and discontinuing discounted services to these grandfathered providers could jeopardize their ability to continue offering essential health care services to rural areas. Extending eligibility for these grandfathered HCPs in the Healthcare Connect Fund helps ensure that these valuable services are not lost in areas that need them, and thus ensures continuity of health care for many rural patients. For similar reasons, we also have grandfathered those Pilot projects that do not have the majority rural HCP membership required of consortium applicants in the Healthcare Connect Fund.

*C. A Hybrid Infrastructure and Services Approach*

46. Discussion. We conclude that a hybrid approach that supports both broadband services and, where necessary, HCP-constructed and owned facilities as part of networks, will best fulfill our goal of developing broadband networks that enable the delivery of 21st century health care. In addition to funding HCP-owned network facilities, we also include as an essential component of this hybrid approach the provision of funding for equipment needed to support networks of HCPs and the provision of support for upgrades that enable HCPs to obtain higher bandwidth connections.

47. We expect that HCP-owned infrastructure will be most useful in providing last-mile broadband connectivity where it is currently unavailable and where existing service providers lack sufficient incentives to construct it. As the American Hospital Association observed: ''Although many rural providers lease broadband services, some construction is still needed. For many of the AHA's rural members, the ability to ensure access to 'last mile' broadband connections to rural health care facility locations is a fundamental problem restricting broadband access.'' We have learned that when providers are unable to build a business case to construct fiber in rural areas, last-mile fiber self-construction may be the only option for a HCP to get the required connectivity. We note that other federal programs—such as the Broadband Telecommunications Opportunities Program (BTOP)—have provided support for construction of ''middle mile'' facilities, and if HCPs can obtain support for last-mile connections from the Healthcare Connect Fund, they can take advantage of such middle mile backbone networks.

48. Providing a self-construction option will also promote our goal of ensuring fiscal responsibility and cost-effectiveness by placing downward pressure on the bids for services. As the Health Information Exchange of Montana observes, the option to construct the network may constrain pricing offered by existing providers, particularly in areas that have little or no competition. When an RFP includes both a services and a self-construction option, bidders will know that if the services prices bid are too high, the HCPs can choose to build their own facilities.

49. We adopt safeguards to ensure that the self-construction option will be exercised only where it is absolutely necessary to enable the HCPs to obtain the needed broadband connectivity. First, the HCP-owned infrastructure option may be employed only where self-construction is demonstrated to be the most cost-effective option after competitive bidding. We require USAC carefully to evaluate this showing; USAC already has experience in evaluating cost-effectiveness for large-scale projects from the Pilot Program. Consortia interested in pursuing self-construction as an option must solicit bids both for services and for construction, in the same posted Request for Proposals (submitted with Form 461), so that they will be able to show either that no vendor has bid to provides the requested services, or that the bids for self-construction were the most cost-effective option. RFPs must provide sufficient detail so that cost-effectiveness can be evaluated over the useful life of the facility, if the consortium pursues a self-construction option. We also permit HCPs that have received no bids on a services-only posting to then pursue a self-construction option through a second posting. We discuss the mechanics of the competitive bidding process and delegate to the Bureau the authority to provide administrative guidance for conducting the competitive bidding process, for the treatment of hybrid (services and construction) RFPs, excess capacity and shared costs, and other necessary guidelines for effective operation of this aspect of the Healthcare Connect Fund.

50. Second, by setting the discount at the same level regardless of whether HCPs choose to purchase broadband services from a provider or construct their own facilities, we ensure that there is no cost advantage to choosing self-construction. We require that all HCPs provide a 35 percent contribution to the cost of supported networks and services, which will help ensure prudent investment decisions. Pilot projects have stated that ownership of newly constructed facilities only makes economic sense for them where there are gaps in availability. And as many HCPs have stated in this proceeding, HCPs are generally not interested in owning or operating broadband facilities, but rather are focused on the delivery of health care.

51. Finally, we impose a $150 million cap on the annual funds that can be allocated to up-front, non-recurring

costs, including HCP-owned infrastructure, and we require that non-recurring costs that exceed an average of $50,000 per HCP in a consortium be prorated over a minimum three-year period. These measures will help ensure that the Fund does not devote an excessive amount of support to large up-front payments for HCP self-construction, which could potentially foreclose HCPs' ability to use the Fund for monthly recurring charges for broadband services. This also addresses the comments of several parties, who suggested that providing funding for infrastructure could put undue pressure on the Fund.

52. In addition to these safeguards, we expect that several other mechanisms in this *Order* will help create incentives for commercial service providers to construct the necessary broadband facilities, so that HCPs will rarely have to construct, own, and operate such facilities themselves. For example, by allowing consortia to include both rural and non-rural sites and to design networks flexibly, we expect to encourage HCPs to form larger consortia that are more attractive to commercial service providers, even if some new broadband build-out is necessary to win the contract. Indeed, in the Pilot Program, we observed that, thanks to consortium bidding, the majority of Pilot projects attracted multiple bids from a range of different service providers. In addition, as in the Pilot Program, the Healthcare Connect Fund will provide support for upfront payments, multi-year funding commitments, prepaid leases, and IRUs. These mechanisms enabled many HCPs in the Pilot Program to meet their broadband connectivity needs without having to construct and own their own broadband facilities.

53. With the limitations and based on our experience with the Pilot Program, we do not expect HCPs to choose to self-construct facilities very often, and when they do, it will be because they have shown that they have no other cost-effective option for obtaining needed broadband. The self-construction option was rarely exercised in the Pilot Program. Only two of 50 projects entirely self-constructed their networks, even though the Pilot Program was originally conceived of as a program supporting HCP construction of broadband networks. The six projects that did self-construct some facilities used those funds primarily for last-mile facilities. We believe the hybrid approach adopted for the Healthcare Connect Fund will preserve the benefits of HCP-owned infrastructure while minimizing the potential for inefficient, duplicative construction of facilities.

54. In light of the safeguards we adopt, we reject arguments that when HCPs construct their own networks, rather than purchasing connectivity from existing commercial service providers, they remove key anchor institutions from the public network, thereby increasing the costs of providing service in rural areas and creating disincentives for network investment in rural areas. Rather, allowing the self-construction option should create incentives for service providers to charge competitive prices for the services offered to anchor institutions such as HCPs, which reduces burden on the rural health care mechanism. Moreover, experience under the Pilot program suggests that a self-construction option for HCPs can provide incentives for commercial service providers to work cooperatively together with HCPs to construct new broadband networks in rural areas, with each party building a portion of the network, and providing excess capacity to the other party under favorable terms, to the benefit of both the HCPs and the greater community.

55. We are also unpersuaded by commenters that argue the Commission lacks authority to provide universal service support for construction of HCP-owned broadband facilities. As the Commission concluded in authorizing the Pilot Program, section 254(h)(2) provides ample authority for the Commission to provide universal service support for HCP ''access to advanced telecommunications and information services,'' including by providing support to HCP-owned network facilities. Nothing in the statute requires that such support be provided only for carrier-provided services. Indeed, prohibiting support for HCP-owned infrastructure when self-construction is the most cost-effective option, would be contrary to the command in section 254(h)(2)(A) that support be ''economically reasonable.''

56. The Montana Telecommunications Association (MTA), which represents telecommunications providers in Montana, also argues that funding HCP-owned infrastructure violates section 254(h)(3) of the Communications Act, which provides that ''[t]elecommunications service and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.'' MTA's argument is unconvincing. As the Commission determined in connection with the Pilot Program, ''the prohibition on resale does not prohibit for-profit entities, paying their fair share of network costs, from participating in a selected participant's network.'' It concluded that the resale provision is ''not implicated when for-profit entities pay their own costs and do not receive discounts provided to eligible health care providers'' because only subsidized services and network capacity can be said to have been ''provided * * * under this subsection.'' The protections we adopt in this *Order* to ensure that non-eligible entities pay their fair share of the cost of health care networks they participate in will help ensure that this principle is satisfied. In 2008, the Bureau provided guidance to the Pilot projects and USAC regarding excess capacity on network facilities supported by universal service funds. We adopt similar guidelines in this *Order* for the treatment of excess capacity on HCP-owned facilities. Under those guidelines, the use of excess capacity by non-HCP entities would not violate the restrictions against sale, resale, or other transfer contained in section 254(h)(3) because HCPs would retain ownership of the excess capacity and because payments for that excess capacity may only be used to support sustainability of the network. Allowing HCPs to own network facilities when it is the most cost-effective option can yield better prices for the acquired broadband services or facilities used in the health care networks, in furtherance of the objectives of section 254(h)(2) and responsible management of universal service funds. Thus, our interpretation of section 254(h)(3) not only advances the universal service goals of section 254(h)(2), but is consistent with the restrictions on subsidies to ineligible entities incorporated in paragraphs (h)(3), (h)(4), and (h)(7)(B) of section 254.

*D. Health Care Provider Contribution*

57. Discussion. We adopt a requirement that all HCPs receiving support under the Healthcare Connect Fund contribute 35 percent towards the cost of all items for which they seek support, including services, equipment, and all expenses related to infrastructure and construction. A flat, uniform percentage contribution is administratively simple, predictable, and equitable, and has broad support in the record. Requiring a significant contribution will provide incentives for HCPs to choose the most cost-effective form of connectivity, design their networks efficiently, and refrain from purchasing unneeded capacity. Vendors

will also have an incentive to offer services at competitive prices, knowing that HCPs will be unwilling to increase unnecessarily their out-of-pocket expenses.

1. Use of a Uniform Contribution Percentage

58. We adopt a flat-percentage approach to calculating an HCP's contribution under the Healthcare Connect Fund. This flat rate will apply uniformly to all eligible expenses and all eligible HCP sites.

59. The use of a uniform participant contribution will facilitate consortium applications and reduce administrative expenses, both for participating HCPs and for the Fund Administrator. In the Telecommunications Program, varying support levels have historically discouraged potential applicants due to ''the complexity of * * * identify[ing] the amount of program reimbursement associated with the difference between rural and urban rates.'' A uniform participant contribution will eliminate this complexity. Many commenters support a flat-rate approach for this reason. Indeed, based on this record, we anticipate that the relative administrative simplicity of the uniform flat discount approach will help attract HCPs to the Healthcare Connect Fund that may have declined to participate in the Telecommunications Program. We expect that the use of a uniform flat discount will therefore further all three of our program goals—increasing HCP access to broadband, fostering health care networks, and maximizing cost-effectiveness of the program.

60. A uniform HCP contribution requirement will also facilitate efficient network design because support will not vary based on network configuration. As the Bureau observed in the *Pilot Evaluation,* a uniform HCP contribution requirement for both services and infrastructure in the Pilot Program enabled consortia to design their networks for maximum network efficiency because there was no negative impact on funding from including nodes with a lesser discount level within the network. A uniform percentage contribution requirement will also ensure that HCPs make purchasing decisions based on cost-effectiveness, regardless of the location or type of the HCP or the services, equipment, or infrastructure purchased.

61. Adopting a uniform contribution requirement will also help eligible HCPs to conduct better long-range planning for their broadband needs and obtain better rates. A clear, uniform rate will allow HCPs to better project anticipated support over a multi-year period, plan accordingly for their broadband services, and as appropriate, enter into multi-year contracts to take advantage of more favorable rates.

62. A flat-rate approach also provides HCPs with a strong incentive to control the total cost of the broadband connectivity, as a participating HCP will share in each dollar of increased costs and each dollar of cost savings. In contrast, in the Telecommunications Program, an HCP using the rural-urban differential pays only the urban rate, so it has little incentive to control the overall cost of the service (*i.e.* the rural rate). Any increases in the overall cost of the service are borne directly by the Fund, which pays the difference between the urban and rural rates.

63. Finally, a flat rate is consistent with the Act. In 2003, the Commission concluded that a flat discount for the Internet Access Program would be consistent with section 254(b)(5), which requires support to be ''specific, sufficient, and predictable.'' We now conclude that a flat discount for the Healthcare Connect Fund is also consistent with section 254(b)(5).

64. A number of commenters suggest that the Commission adopt different HCP contribution percentages depending on the identity of the health care provider or based on other factors, and such an approach was also recommended in the *National Broadband Plan.* The proffered justification for a varying percentage contribution requirement is to enable the targeting of scarce resources to those HCPs or geographic areas most in need. Some commenters suggest that discount rates should be increased for certain HCPs, such as HCPs located in Health Professional Shortage Areas or Medically Underserved Areas, or for HCPs that are in particular need of support to achieve ''meaningful use'' of electronic health records under the Affordable Care Act. While supporting providers in areas with health care professional shortages and promoting achievement of meaningful use are both important public policy goals, we are not persuaded at this time that providing a non-uniform discount is necessary in order to accomplish these goals. We note that the statutory categories of eligible HCPs in the Act already capture many health care providers who serve underserved populations, including rural health clinics, community and migrant health centers, and community mental health centers.

2. 35 Percent HCP Contribution

65. Discussion. We find that requiring a 35 percent HCP contribution appropriately balances the objectives of enhancing access to advanced telecommunications and information services with ensuring fiscal responsibility and maximizing the efficiency of the program. A 35 percent HCP contribution results in a 65 percent discount rate, which represents a significant increase over the 25 percent discount provided today for Internet access, and the 50 percent proposed for the Broadband Services Program in the *NPRM.* We believe that a 35 percent contribution appropriately balances the need to provide sufficient incentives for HCPs to participate in broadband networks, while simultaneously ensuring that they have a sufficient financial stake to seek out the most cost-effective method of obtaining broadband services.

66. We base our conclusion on a number of factors. First, many state offices of rural health, which work most directly with rural HCPs, believe that a 65 percent discount is required to provide a ''realistic incentive'' for many eligible rural HCPs to participate. A 65 percent discount rate is also similar to the average effective discount rate in the Telecommunications Program, which is approximately 69 percent, excluding Alaska. The effective discount rate in the Telecommunications Program provides a reasonable proxy for the discount rate that will be sufficient to allow health care providers in rural areas, which tend to have high broadband costs, to participate in the program. The discount level we set also falls between the proposed discount levels in the *NPRM* (50 percent for the Broadband Services Program and 85 percent for the Health Infrastructure Program)—a reasonable choice given the hybrid nature of the program we adopt. A 35 percent HCP contribution is also within the range of the match required in other federal programs subsidizing broadband infrastructure. For example, the BTOP program required a 20 percent match, while the U.S. Department of Agriculture's Broadband Initiatives Program overall provided an average of 58 percent of its funding in the form of grants, with 32 percent of its funding in loans (which the recipients ultimately repay), and 10 percent recipient match.

67. We also expect that the 65 percent discount will be sufficient to induce many HCPs to participate in the Healthcare Connect Fund—both those currently in the Telecommunications Program and those that have not participated in that program before. We expect that at a 65 percent discount, eligible HCPs participating in consortia in the Healthcare Connect Fund will generally pay less ''out-of-pocket'' when

purchasing the higher bandwidth connections necessary to support telehealth applications than they would pay as individual participants in the Telecommunications Program. The Pilot Program showed that bulk buying through consortia, coupled with competitive bidding, can reduce the prices that HCPs pay for services and infrastructure through their increased buying power.

68. Other attractive features of the Healthcare Connect Fund include the lower administrative costs and the broader eligibility of services and equipment, relative to the Telecommunications Program. These factors may offset to some degree concerns regarding the size of the contribution requirement from those who advocated a lower HCP contribution. We also note that from a program efficiency perspective, the better prices negotiated by consortia in the Pilot Program, relative to the prices paid by Telecommunications Program participants, will mean that USF dollars will go further in the new program, particularly as HCPs demand the higher bandwidth and better service quality needed for telehealth applications.

69. We recognize that a 35 percent contribution will be a significant commitment for many health care providers, and that many commenters argued for a lower contribution amount from HCPs. One of our core objectives, however, is to ensure that HCPs have a financial stake in the services and infrastructure they are purchasing, thereby providing a strong incentive for cost-effective decision-making and promoting the efficient use of universal service funding.

70. We acknowledge that some current Pilot participants have argued that a discount rate lower than 85 percent will preclude new sites from being added to existing networks and may even result in existing sites dropping off the network. We nonetheless believe a cautious approach is justified given that the new Healthcare Connect Fund will expand eligibility and streamline the application process compared to the existing Telecommunications Program, which we hope will increase the number of participating HCPs. Even within the existing program, the number of participating HCPs has steadily increased in recent years, averaging just under 10 percent annual growth for the past five years. Meanwhile the Pilot Program has attracted over 3,800 HCPs, the majority of which were not previously participating in the RHC Program.

71. A 65 percent discount rate will help keep demand for the overall health care universal service, including the Healthcare Connect Fund, below the $400 million cap for the foreseeable future, even as program participation expands. We estimate that there are approximately 10,000 eligible rural HCPs nationwide, of which approximately 54 percent (5,400) are participating in the RHC Telecommunications, Internet Access, or Pilot Programs. If we assume that in five years (1) the rural HCP participation rate increases from 54 percent to 75 percent, (2) the number of rural HCPs participating in the Telecommunications Program does not significantly decrease, and (3) the average annual support per HCP is $14,895 in the Healthcare Connect Fund (including support for both recurring and non-recurring costs), the projected size of the annual demand for funding (including non-rural and rural HCPs) would be approximately $235 million. We will continue to monitor the effect of the 35 percent contribution requirement on participation in the program and on the USF, and stand ready to adjust the contribution HCP requirement or establish additional prioritization rules, should it prove necessary.

3. Limits on Eligible Sources of HCP Contribution

72. Consistent with the Pilot Program, we limit the sources for HCPs' contribution (*i.e.,* the non-discounted portion) to ensure that participants pay their share of the supported expenses. Only funds from an eligible source will apply towards a participant's required contribution. In addition, consortium applicants are required to identify with specificity their source of funding for their contribution of eligible expenses in their submissions to USAC. Requiring participants to pay their share helps ensure efficiency and fiscal responsibility and helps prevent waste, fraud, and abuse.

73. Eligible sources include the applicant or eligible HCP participants; state grants, funding, or appropriations; federal funding, grants, loans, or appropriations except for other federal universal service funding; Tribal government funding; and other grant funding, including private grants. Any other source is not an eligible source of funding towards the participant's required contribution. Examples of ineligible sources include (but are not limited to) in-kind or implied contributions; a local exchange carrier (LEC) or other telecom carrier, utility, contractor, consultant, vendor or other service provider; and for-profit entities. We stress that participants that do not demonstrate that their contribution comes from an eligible source or whose contribution is derived from an ineligible source will be denied funding by USAC. Moreover, participants may not obtain any portion of their contribution from other universal service support program, such as the RHC Telecommunications Program.

74. We conclude that these limitations on eligible sources are necessary to help safeguard against program manipulation and to help prevent conflicts of interest or influence from vendors and for-profit entities that may lead to waste, fraud, and abuse. Accordingly, we are unconvinced by commenters that argue the eligible sources should include in-kind contributions; contributions from carriers, network service providers, or other vendors; and contributions from for-profit entities. First, allowing in-kind or implied contributions would substantially increase the complexity and burden associated with administering the program. It would be difficult to accurately measure the value of in-kind or implied contributions to ensure participants are paying their share, and the costs and challenges associated with policing in-kind and implied contributions would likely be substantial. Second, allowing carrier, service provider, or other vendor contributions would distort the competitive bidding process and reduce HCPs' incentives to choose the most cost-effective bid, leading to potential waste, fraud, and abuse.

75. Some commenters urge the Commission to allow for-profit entities to pay an eligible HCPs contribution because ''[t]he benefits of improved telehealth capabilities cannot be fully achieved if for-profit health care services providers are not part of the health care delivery network.'' This argument is based on a faulty premise. To be clear, the prohibition against a for-profit HCP paying the contribution of an eligible HCP does not prevent the for-profit HCP from participating in one or more networks that receive Healthcare Connect Fund support, as long as the for-profit pays its ''fair share.'' Rather, the prohibition helps avoid creating an incentive for participating eligible HCPs to use support to benefit ineligible entities (*e.g.,* for-profit HCPs).

76. *Future Revenues from Excess Capacity as Source of Participant Contribution.* Some consortia may find, after competitive bidding, that construction of their own facilities is the most cost-effective option. Due to the low additional cost of laying additional

fiber, some Pilot projects who chose the ''self-construction'' option found that they were able to lay more fiber than needed for their health care network and use revenues from the excess capacity as a source for their 15 percent contribution. We conclude that under the following limited circumstances, consortia in the Healthcare Connect Fund may use future revenues from excess capacity as a source for their 35 percent match.

- The consortium's RFP must solicit bids for both services provided by third parties and for construction of HCP-owned facilities, and must show that ''self-construction'' is the most cost-effective option. Applicants are prohibited from including the ability to obtain excess capacity as a criterion for selecting the most cost-effective bid (*e.g.* applicants cannot accord a preference or award ''bonus points'' based on a vendor's willingness to construct excess capacity).
- The participant must pay the full amount of the additional costs for excess capacity facilities that will not be part of the supported health care network. The additional cost for excess capacity facilities cannot be part of the participant's 35 percent contribution, and cannot be funded by any health care universal service support funds. The inclusion of excess capacity facilities cannot increase the funded cost of the dedicated network in any way.
- An eligible HCP (typically the consortium, although it may be an individual HCP participating in the consortium) must retain ownership of the excess capacity facilities. It may make the facilities available to third parties only under an IRU or lease arrangement. The lease or IRU between the participant and the third party must be an arm's length transaction. To ensure that this is an arm's length transaction, neither the vendor that installed the excess capacity facilities, nor its affiliate, would be eligible to enter into an IRU or lease with the participant.
- The prepaid amount paid by other entities for use of the excess capacity facilities (IRU or lease) must be placed in an escrow account. The participant can then use the escrow account as an asset that qualifies for the 35 percent contribution to the project.
- All revenues from use of the excess capacity facilities by the third party must be used for the project's 35 percent contribution or for sustainability of the health care network supported by the Healthcare Connect Fund. Such network costs may include administration, equipment, software, legal fees, or other costs not covered by the Healthcare Connect Fund, as long as they are relevant to sustaining the network.

77. We delegate authority to the Bureau to specify additional administrative requirements applicable to excess capacity, including requirements to ensure that HCPs have appropriate incentives for efficient spending (including, if appropriate, a minimum contribution from funds other than revenues from excess capacity), and to protect against potential waste, fraud, and abuse, as part of the infrastructure component of the program.

## IV. Eligible Services and Equipment

78. Overview. We discuss the services and equipment for which the Healthcare Connect Fund will provide support. We also provide examples of services and equipment that will not be supported. Section 254(h)(2)(A) of the Act directs the Commission to establish competitively neutral rules to ''enhance * * * access to advanced telecommunications and information services * * * for health care providers.'' Pursuant to that authority, we will provide support for services whether provided on a common carrier or private carriage basis, reasonable and customary one-time installation charges for such services, and network equipment necessary to make the broadband service functional. For HCPs that apply as consortia, we will also provide support for upfront charges associated with service provider deployment of new or upgraded facilities to provide requested services, dark or lit fiber leases or IRUs, and self-construction where demonstrated to be the most cost-effective option. Requests for funding that involve upfront support of more than $50,000, on average, per HCP will be subject to certain limitations. In general, we find that this approach will ensure the most efficient use of universal service funding.

79. Immediately below is a chart summarizing what services and equipment are eligible for support under the Healthcare Connect Fund.

ELIGIBLE SERVICES AND EQUIPMENT

| | INDIVIDUAL Applicants | CONSORTIUM Applicants |
|---|---|---|
| Eligible Services (§ V.A.1) | ✓ | ✓ |
| Reasonable & Customary Installation Charges (§ V.A.6) (≤$5,000 undiscounted cost) | ✓ | ✓ |
| Lit Fiber Lease (§ V.A.3) | ✓ | ✓ |
| Dark Fiber (§ V.A.3) | | |
| • Recurring charges (lease of fiber and/or lighting equipment, recurring maintenance charges) | ✓ | ✓ |
| • Upfront payments for IRUs, leases, equipment | No | ✓ |
| Connections to Research & Education Networks (§ V.A.4) | ✓ | ✓ |
| HCP Connections Between Off-Site Data Centers & Administrative Offices (§ V.A.5) | ✓ | ✓ |
| Upfront Charges for Deployment of New or Upgraded Facilities (§ V.A.7) | No | ✓ |
| HCP-Constructed and Owned Facilities (§ IV.D) | No | ✓ |
| Eligible Equipment (§ V.B) | | |
| • Equipment necessary to make broadband service functional | ✓ | ✓ |
| • Equipment necessary to manage, control, or maintain broadband service or dedicated health care broadband network | No | ✓ |

### *A. Eligible Services*

80. We describe the services that will be eligible for support under the Healthcare Connect Fund. We are guided, among other considerations, by our statutory directive to enhance access to ''advanced telecommunications and information services'' in a competitively neutral fashion. We conclude that providing flexibility for HCPs to select a range of services, within certain defined limits, and in conjunction with the competitive bidding requirements we adopt, will maximize the impact of Fund dollars (and scarce HCP resources).

81. Specifically, we will provide support for advanced services without limitation as to the type of technology or provider. We allow HCPs to utilize both public and private networks, and different network configurations (including dedicated connections between data centers and administrative offices), and lease or purchase dark fiber, depending on what is most cost-effective. We also provide support for reasonable and customary installation charges (up to an undiscounted cost of $5,000). For consortium applicants, we will also provide support for upfront payments to facilitate build-out of facilities to HCPs. We limit such funding to consortia because we anticipate that group buying for such services and equipment will lead to lower prices and better bids, resulting in more efficient use of Fund dollars.

82. We decline to adopt a minimum bandwidth requirement for the supported services because many rural HCPs still lack access to higher broadband speeds. We will, however, limit certain types of support to connections that provide actual speeds of 1.5 Mbps (symmetrical) or higher, in order to ensure that we do not invest in networks based on outdated technology.

1. Definition of Eligible Services

83. Discussion. We adopt a rule to provide support for any service that meets the following definition:

> Any advanced telecommunications or information service that enables HCPs to post their own data, interact with stored data, generate new data, or communicate, by providing connectivity over private dedicated networks or the public Internet for the provision of health information technology.

The definition we adopt differs from the *NPRM* proposal in only two respects. First, because we allow all HCPs to participate in consortia and receive support (subject to the limitations on non-rural HCPs), we have removed the language referring to ''rural'' HCPs. Second, we delete the word ''broadband access'' from the definition originally proposed, to make clear that eligible services include not only broadband Internet access services, but also high-speed transmission services offered on a common carrier or non-common carrier basis that may not meet the definition of ''broadband'' that the Commission has used in other contexts. This broad definition allows HCPs to choose from a wide range of connectivity solutions, all of which enhance their access to advanced services, based on their individual health care broadband needs as available technology evolves over time; decisions will be made in the marketplace without regard to regulatory classification decisions of the connectivity solutions.

84. *Public and Private Networks.* We conclude that eligible HCPs may receive support for services over both the public Internet and private networks (*i.e.,* dedicated connections that do not touch the public Internet). As discussed in the *NPRM,* access to advanced telecommunications and information services for health care delivery is provided in a variety of ways today. For example, due to privacy laws and EHR requirements, HCPs may find that it best suits their needs to securely transmit health IT data to other HCPs over a private dedicated connection. In other instances (*e.g.,* communicating with patients via a Web site), HCPs may need to utilize the public Internet, or it may simply be more cost-effective to utilize Dedicated Internet Access services for certain types of traffic. Several Pilot projects have determined that a mix of both public and private networks best fits the needs of their HCPs.

85. *Network Configurations.* Under the new rule, ''eligible services'' may include last mile, middle mile, or backbone services, as long as support for such services is requested and used by an eligible HCP for eligible purposes in compliance with other program rules. HCPs emphasize that they need the ability to control the design of their networks, even if the network relies on leased services. Our Pilot Program experience also indicates that HCPs are likely to tailor their funding requests based on what services are already available. For example, if a region already has a middle mile network suitable for health care use, the applicant may choose to focus its funding request on last mile facilities to connect to the middle mile or backbone network. On the other hand, if there is no pre-existing middle mile connection between the HCPs in the network, providers may choose to seek funding to lease such capacity instead. Therefore, we find that allowing flexibility in the network segments supported will best leverage prior investments by allowing maximum use of existing infrastructure.

86. In the *NPRM,* the Commission proposed that the Broadband Services Program would subsidize costs for any advanced telecommunications and information services that provide ''point-to-point broadband connectivity.'' In response to the *NPRM,* some commenters expressed concern that only traditional point-to-point circuits might be eligible for funding, and such a limitation could preclude use of more cost-effective point-to-multipoint, IP-based, or cloud-based architectures. Based on our full consideration of the record, we conclude that support under the Healthcare Connect Fund will not be limited to ''point-to-point'' services. Rather, any advanced service is eligible, and HCPs may request support for any type of network configuration that complies with program rules (*e.g.,* is the most cost-effective). This approach comports with the statutory directive that the Commission enhance access to advanced services in a manner that is ''competitively neutral.''

87. *Technology.* Consistent with the statutory requirement that our rules be competitively neutral, we conclude that eligible services may be provided over any available technology, whether wireline (copper, fiber, or any other medium), wireless, or satellite. We also find that a competitively neutral approach will best ensure that HCPs can make cost-effective use of Fund support. We provide additional guidance regarding fiber leases, and minimum bandwidth and service quality requirements.

2. Minimum Bandwidth and Service Quality Requirements

88. Discussion. We will not impose minimum bandwidth and service quality requirements for the Healthcare Connect Fund, based on the record in this proceeding. Commenters agree that HCPs need certain minimum levels of reliability, redundancy, and quality of service, but they note that the exact requirement may vary depending on the application, and that not all HCPs will have access to services that provide a specified level of reliability and quality. While our goal is to encourage HCPs to obtain broadband connections at the speeds recommended in the *National Broadband Plan,* the record indicates that in some areas of the country, HCPs face limited options in obtaining speeds of 4 Mbps or above. Commenters note that in areas where higher speed connections are not available, telemedicine networks have nevertheless been able to operate with connections at speeds less than 4 Mbps. Commenters also state that some of the smallest rural HCPs simply may not be able to afford higher bandwidth connections, even when such connections are available. These commenters express concern that a minimum bandwidth requirement could result in HCPs either (1) being forced to buy bandwidths that are not cost-effective for their circumstances; or (2) being unable to receive health care

universal service discounts (due to the cost of the required minimum-bandwidth connection). We do not wish to prevent the neediest HCPs from receiving discounts, especially if they are able to address their connectivity needs in the near term by utilizing a connection below a defined minimum. After reviewing the record, we conclude that it would be difficult to set a minimum speed requirement at this time that would not have the unintended effect of potentially precluding some HCPs from obtaining connectivity currently appropriate for their individual needs. We therefore conclude it would be premature now to set a minimum threshold speed for connections that are supported in the Healthcare Connect Fund.

89. We will continue to provide support in the Healthcare Connect Fund for services that have been historically supported through the Internet Access Program, including DSL, cable modem, and other similar forms of Internet access. We expect recipients to migrate to services over time that deliver higher capabilities. We do, however, adopt one limitation designed to ensure that the focus of the program remains on advancing access to the bandwidths that increasingly will be needed for health care purposes. No upfront payments will be eligible for funding for services that deliver less than 1.5 Mbps symmetrical (*i.e.* less than T–1 speeds), except for reasonable installation costs under $5,000. We have chosen the 1.5 Mbps threshold because HCPs have indicated that they can successfully implement telemedicine services over a 1.5 Mbps connection, if that is the only practical option. Therefore, we conclude that 1.5 Mbps is the minimum threshold at which HCPs should be able to obtain support for upfront costs for build-out or infrastructure upgrades.

90. We note that the Pilot Program allowed most participants to obtain speeds of 4 Mbps or above, and we expect that the reforms adopted in this *Order* will generally allow HCPs to obtain access to the bandwidths recommended in the *National Broadband Plan.* We agree with the National Rural Health Association and the California Telehealth Network that we should benchmark actual speeds obtained under the Healthcare Connect Fund to determine how well the program is meeting HCPs' broadband needs. Therefore, we will also require participants to report basic information regarding bandwidth associated with the services obtained with universal service discounts. To enable HCPs to have the information necessary to file such reports, we will require all service providers participating in the Healthcare Connect Fund to disclose the required metrics to their HCP customers.

3. Dark and Lit Fiber

91. Discussion. Service providers today provide numerous broadband services over fiber that the service provider manages and has ''lit'' (*i.e.,* the service provider has furnished the modulating equipment and activated the fiber). HCPs are currently able to receive support for telecommunications services and Internet access services provided over such fiber, as are schools and libraries in the E-rate program. The Healthcare Connect Fund will continue to support broadband services provided over service provider-lit fiber. The *NPRM* proposal, however, raised two additional issues: (1) The eligibility of dark fiber, and (2) support for costs associated with dark or lit fiber leases, including upfront payments associated with leases or indefeasible right of use (IRU) arrangements for lit or dark fiber.

92. *Eligibility of dark fiber.* We conclude that eligible HCPs may receive support for ''dark'' fiber where the customer, not the service provider, provides the modulating electronics. In the *NPRM,* the Commission noted that under such an approach, applicants would, for instance, be able to lease dark fiber that may be owned by state, regional or local governmental entities, when that is the most cost-effective solution to their connectivity needs. Consistent with our practice in the E-rate program, however, we will only provide support for dark fiber when it is ''lit'' and is actually being *used* by the HCP; we will not provide support for dark fiber that remains unlit.

93. Consistent with Commission precedent, we find that dark fiber is a ''service'' that enhances access to advanced telecommunications and information services consistent with section 254(h)(2)(A) of the Act. As in the E-rate program, we conclude that supporting dark fiber provides an additional competitive option to help HCPs obtain broadband in the most cost-effective manner available in the marketplace. HCPs generally support making dark fiber eligible. For example, IRHN states that the varying broadband environments in rural areas throughout the country need to be ''mined'' to find the most cost-effective solution, including existing fiber infrastructure that can be brought into use by HCPs seeking dark fiber. Commenters also agree that making dark fiber eligible will allow the cost-effective leveraging of existing resources and investments, including state, regional, and local networks.

94. As the Commission concluded in the E-rate context, we are not persuaded by arguments that entities who are not telecommunications providers, such as HCPs, ''have a poor track record making dark fiber facilities viable for their services.'' While dark fiber will not be an appropriate solution for all HCPs, Pilot projects have demonstrated that they can successfully incorporate dark fiber solutions into a regional or statewide health care network. We are also not persuaded by the argument that dark fiber solutions may not be cost-effective. HCPs will be required to undergo competitive bidding, and our actions merely ensure that HCPs have an additional option to consider during that process. If service providers can provide comparable, less expensive lit fiber alternatives, we anticipate that such providers will bid to provide services to HCPs, who are required to select the most cost-effective option. As the Commission found in the *Schools and Libraries Sixth Report and Order,* 75 FR 75393, December 3, 2010, if more providers bid to provide services, the resulting competition should better ensure that applicants—and the Fund—receive the best price for the most bandwidth.

95. In order to further ensure that dark fiber is the most cost-effective solution, however, we will limit support for dark fiber in two ways. First, requests for proposals (RFPs) that allow for dark fiber solutions must also solicit proposals to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or IRU. Second, if an applicant intends to request support for equipment and maintenance costs associated with lighting and operating dark fiber, it must include such elements in the same RFP as the dark fiber so that USAC can review all costs associated with the fiber when determining whether the applicant chose the most cost-effective bid.

96. We are not persuaded that allowing a HCP to purchase dark fiber from state, regional, or local government entities will negate the HCP's ability to ''maintain a fair and open competitive bidding environment'' if the HCP is ''linked'' to the governmental entity in question. We adopt requirements that prohibit potential service providers, including government entities, from also acting as either a Consortium Leader or consultant or providing other types of specified assistance to HCPs in the competitive bidding process. Allowing HCPs to lease dark fiber should increase competition among fiber providers and

ensure a more robust bidding process. HCPs still must demonstrate that the bid they choose is the most cost-effective. As the Commission stated in the E-rate context, we believe our competitive bidding rules will protect against the possibility of waste, fraud, or abuse in that context. To the extent there are violations of the competitive bidding rules, such as sharing of inside information during the competitive bidding process, USAC will adjust funding commitments or recover any disbursed funds through its normal process. As the Commission concluded in the E-rate context, our RHC rules and requirements, including the competitive bidding rules, apply to all applicants and service providers, irrespective of the entity providing the fiber network.

97. *Fiber leases and IRUs.* As proposed in the *NPRM,* eligible HCPs may receive support for recurring costs associated with leases or IRUs of dark (*i.e.,* provided without modulating equipment and unactivated) or lit fiber. We conclude that HCPs may not use fiber leases and IRUs to acquire unneeded fiber strands or warehouse excess dark fiber strands for future use. If a HCP chooses to lease (or obtain an IRU) for ''dark'' (*i.e.,* unactivated) fiber, recurring charges under the lease or IRU are eligible only for fiber strands that have been lit within the funding year, and only once the fiber strand has been lit.

98. Eligible HCPs applying as consortia may also receive support for upfront charges associated with fiber leases or IRUs, subject to the limitations applicable to all upfront charges. An IRU or lease for dark fiber typically requires a large upfront payment, even if no new construction is required. In some cases, however, service providers may deploy new fiber facilities to serve HCPs under the lease or IRU, and may seek to recover all of part of those costs through non-recurring charges (sometimes called ''special construction charges''). Such ''build-out'' costs are eligible for support. Consistent with the general rule we adopt, we will provide support for build-out costs from an off-premises fiber network to the service provider demarcation point. We decline to provide support for such charges after the service provider demarcation point, consistent with the Commission's current policy of not supporting internal connections for HCPs.

99. In the E-rate program, fiber must be lit within the funding year for non-recurring charges to be eligible. We adopt this requirement in the Healthcare Connect Fund. HCPs, however, unlike schools, do not have a summer vacation period during which construction can take place without disrupting normal operations. Furthermore, in some rural areas, weather conditions can cause unavoidable delays in construction. Therefore, we will allow applicants to receive up to a one-year extension to light fiber if they provide documentation to USAC that construction was unavoidably delayed due to weather or other reasons.

100. *Maintenance Costs.* We also find that HCPs may receive support for maintenance costs associated with leases of dark or lit fiber. Only HCPs applying as consortia may receive support for upfront payments for maintenance costs.

101. *Equipment.* We will provide support for equipment necessary to make a broadband service functional. Consistent with that standard, we find that HCPs may receive support for the modulating electronics and other equipment necessary to light dark fiber. If equipment is leased for a recurring monthly (or annual) fee, HCPs may receive support for those recurring costs. HCPs applying as consortia may also receive support for upfront payments associated with purchasing equipment, subject to the limitations.

102. *Eligible Providers.* The Commission has previously authorized schools and libraries to lease dark fiber, and authorizes schools and libraries to lease any fiber connectivity (not just dark fiber) from any entity, including state, municipal or regional research networks and utility companies. We will allow HCPs to lease fiber connectivity from any provider.

4. Connections to Internet2 or National LambdaRail

103. Discussion. ''Broadband Services'' in this context includes backbone services. We find that the membership fees charged by Internet2 and NLR are part of the cost of obtaining access to the backbone services provided by these organizations, and thus are eligible for support as recurring costs for broadband services. We delegate authority to the Wireline Competition Bureau to designate as an eligible expense, upon request, membership fees for other non-profit research and education networks similar to Internet2 and NLR. We further find that broadband services required to connect *to* Internet2 or NLR should be eligible for support under the Healthcare Connect Fund, as well as any broadband services obtained directly *from* Internet2 or NLR. Commenters generally support providing support for both membership fees and for the broadband services required to connect health care networks to Internet2 and NLR. In addition, some commenters believe that these networks may provide a level of service not available from commercial providers in certain situations.

104. We conclude, however, that it is appropriate to require participants to seek competitive bids from NLR and Internet2, or any other research and education network, through our standard competitive bidding process. We recognize and anticipate that in some cases, Internet2 or NLR services may be the most cost-effective solution to meet a HCP's needs. As noted by commenters, these networks can provide many benefits, and the most cost-effective solution for HCP needs may come from Internet2 or NLR. There may be instances, however, under which a more cost-effective solution is available from a commercial provider, or a non-profit provider other than Internet2 or NLR. Many commenters opposed the Commission's proposal to exempt National LambdaRail and Internet2 from competitive bidding, arguing, among other things, that such an exemption would be anti-competitive by disadvantaging other telecommunications providers. A competitive bidding requirement that applies equally to all participants will ensure that HCPs can consider possible options from all interested service providers. Because applicants must already engage in competitive bidding for all other services, we do not believe it would be overly burdensome to require applicants to also include Internet2 or NLR in their competitive bidding process. While we encourage all applicants to fully consider the benefits of connecting to non-profit research and education networks such as Internet2 and NLR, we emphasize that it is not a requirement to connect to Internet2 or NLR.

5. Off-Site Data Centers and Off-Site Administrative Offices

105. Discussion. Based on our experience with the RHC Telecommunications and Pilot Programs, we adopt a rule that provides support under the Healthcare Connect Fund for the connections and network equipment associated with off-site data centers and off-site administrative offices used by eligible HCPs for their health care purposes, subject to the conditions and restrictions. There has been significant change in how HCPs use information technology in the delivery of health care since the Commission originally adopted the rules for the Telecommunications Program that do not provide support for off-site data centers and administrative

offices. This new rule appropriately recognizes ''best practices'' in health care facility and infrastructure design and the way in which HCPs increasingly accomplish their data storage and transmission requirements. It also enables HCPs to use efficient network connections, rather than having to re-route traffic unnecessarily in order to obtain support. Many commenters pointed out the operational and network efficiency gains from this approach.

106. For purposes of the rule we adopt, an ''off-site administrative office'' is a facility that does not provide hands-on delivery of patient care, but performs administrative support functions that are critical to the provision of clinical care by eligible HCPs. Similarly, an ''off-site data center'' is a facility that serves as a centralized repository for the storage, management, and dissemination of an eligible HCP's computer systems, associated components, and data. Under the new rule, we expand the connections that are supported for already eligible HCPs to include connections to these locations when purchased by HCPs in the Healthcare Connect Fund.

107. Specifically, subject to the conditions and restrictions, we provide support in the Healthcare Connect Fund for connections used by eligible HCPs: (i) Between eligible HCP sites and off-site data centers or off-site administrative offices, (ii) between two off-site data centers, (iii) between two off-site administrative offices, (iv) between an off-site data center and the public Internet or another network, and (v) between an off-site administrative office and an off-site data center or the public Internet or another network. We also expand the eligibility of network equipment to provide support for such equipment when located at an off-site administrative office or an off-site data center. In addition, we establish that support for such connections and/or network equipment is available both to single HCP applicants or consortium applicants under the Healthcare Connect Fund. Finally, we include support for connections at such off-site locations even if they are not owned or controlled by the HCP.

108. We adopt this rule with certain conditions and restrictions to ensure the funding is used to support only eligible public or non-profit HCPs and to protect the program from potential waste, fraud, and abuse. First, the connections and network equipment must be used solely for health care purposes. Second, the connections and network equipment must be purchased by an eligible HCP or a public or non-profit health care system that owns and operates eligible HCP sites. Third, if traffic associated with one or more ineligible HCP sites is carried by the supported connection and/or network equipment, the ineligible HCP sites must allocate the cost of that connection and/or equipment between eligible and ineligible sites, consistent with the ''fair share'' principles. These conditions and requirements should fully address the concerns of those commenters who fear that these additional supported connections may be used long-term for non-health care purposes.

109. As commenters point out, HCPs often find increased efficiencies by locating administrative offices and data centers apart from the site where patient care is provided. This is especially true for groups of HCPs, including smaller HCPs, who often share administrative offices and/or data centers, to save money and pool resources. Furthermore, it does not make practical sense to distinguish administrative offices and/or data centers that are located off-site but otherwise perform the same functions as on-site facilities, and which require the same broadband connectivity to function effectively. While off-site administrative offices and off-site data centers do not provide ''hands on'' delivery of patient care, they often perform support functions that are critical to the provision of clinical care by HCPs. For example, administrative offices may coordinate patient admissions and discharges, ensure quality control and patient safety, and maintain the security and completeness of patients' medical records. Administrative offices also perform ministerial tasks, such as billing and collection, claims processing, and regulation compliance. Without an administrative office capable of carrying out these functions, an eligible HCP may not be able to successfully provide patient care.

110. Similarly, off-site data centers often perform functions, such as housing electronic medical records, which are critical to the delivery of health care at eligible HCP sites. For example, the Utah Telehealth Network uses a primary data center in West Valley City, Utah with a backup secondary data center in Ogden, Utah to deliver approximately 2,500 clinical and financial applications to eligible HCP sites. North Carolina Telehealth Network plans to use data center connectivity to help public health agencies comply with ''meaningful use'' of EHRs.

111. By providing support for the additional connections (*e.g.,* those connections beyond the direct connection to an eligible HCP site) and network equipment associated with off-site administrative offices and off-site data-centers, eligible HCPs will be able to design their networks more efficiently. For example, the use of remote cloud-based EHR systems has become a ''best practice,'' especially for smaller HCPs, for whom that solution is often more affordable. In such cases, a direct connection from the HCP off-site administrative office and/or off-site data center to the network hosting the remote cloud-based EHR system enables the more efficient flow of network traffic. In comparison, if these additional connections and network equipment were not supported, an HCP may be forced to route traffic from its off-site administrative office or off-site data center that is destined for the remote EHR system back through the eligible HCP site, potentially resulting in substantial inefficiency in the use of funding.

112. After reviewing the record, we conclude that requiring that an eligible HCP to have majority ownership or control over an off-site administrative office or data center in order for it to be eligible for support would impose an unnecessary burden on HCPs seeking to use broadband effectively to deliver health care to their patients. Providing support for eligible expenses associated with off-site administrative offices and off-site data centers was widely endorsed by commenters, but commenters noted that there is a wide variation in the way that HCPs structure their physical facilities. For example, HHS explains that an HCP often has no ownership or control of the off-site data center hosting its health care related equipment and servers. NCTN suggests that the Commission identify ''eligible functions'' rather than evaluating ownership. The adopted rule addresses these concerns and provides eligible HCPs with the flexibility to use off-site data centers and administrative offices irrespective of ownership or control, subject to the conditions and requirements.

113. The adopted approach also accommodates a variety of arrangements for the operation of off-site administrative offices and/or off-site data centers. For instance, one commenter was concerned that the *NPRM* proposal unreasonably excluded support for the off-site administrative offices and off-site data centers owned by a public or non-profit health care system rather than by one or more eligible HCP sites. Under the rule we adopt, the network equipment and connections associated with these off-site facilities owned by public or non-profit health care systems are eligible for

support to the extent they satisfy the conditions and restrictions. Any network equipment and connections shared among a system's eligible and ineligible HCP sites may only receive support to the extent that the expenses are cost allocated according to the guidelines. We believe this approach is consistent with the intent of the statute and best balances the objectives of fiscal responsibility and increasing access to broadband connectivity to eligible HCPs.

6. Reasonable and Customary Installation Charges up to $5,000

114. Discussion. We will provide support for reasonable and customary installation charges for broadband services, up to an undiscounted cost of $5,000 (*i.e.,* up to $3,250 in support) per HCP location. Commenters generally agree with providing support for installation charges. ACS suggests, however, that in order to preserve funds, the Commission should limit the scope of this funding to only the most medically underserved areas (*i.e.,* those with the highest HPSA score). We conclude, however, that the better course is to limit the amount of installation charges per eligible HCP location. Because our experience with the RHC Telecommunications and Pilot Programs indicates that undiscounted installation charges are typically under $5,000 per location, we conclude that setting a cap at this level will ensure that as many HCPs can obtain the benefits of broadband connectivity as possible. HCPs who are subject to installation charges higher than this amount may seek upfront support for eligible services or equipment, if those charges independently qualify as eligible expenses (*e.g.,* upfront charges for service provider deployment of facilities, costs for HCP-constructed and owned infrastructure, network equipment, etc.).

7. Upfront Charges for Service Provider Deployment of New or Upgraded Facilities To Serve Eligible Health Care Providers

115. Discussion. Eligible consortia may obtain support for upfront charges for service provider deployment of new or upgraded facilities to serve eligible HCP sites that are applying as part of the consortium, including (but not limited to) fiber facilities. Although the Pilot Program has helped thousands of HCPs to obtain broadband services, many HCPs in more remote, rural areas still lack access to broadband connections that effectively meet their needs. The Pilot Program demonstrated that many HCPs prefer not to own the physical facilities comprising their networks, but can still assemble a dedicated health care network if funds are available for service provider construction and upgrades where broadband facilities are not already available. In a number of instances, Pilot projects found that support for upfront charges for deployment of service provider facilities allowed them to find the most cost-effective services to meet their needs while obtaining the benefits of connecting to existing networks.

116. Commenters recommend that the Healthcare Connect Fund support service provider build-out charges, arguing that will result in cost-effective pricing, which in turn reduces the cost to the Fund. This solution may be particularly useful when a health care network covers a large region served by multiple vendors, because the network can maximize the use of existing infrastructure and seek funding for build-out only where necessary. For example, OHN's multi-vendor leased line network utilized 151.06 miles of existing infrastructure, and stimulated 86.41 miles of new middle-mile connectivity.

117. We adopt a rule to provide support for service provider deployment of facilities up to the ''demarcation point,'' which is the boundary between facilities owned or controlled by the service provider, and facilities owned or controlled by the customer. In other words, the demarcation point is the point at which responsibility for the connection is ''handed off'' to the customer. Thus, charges for ''curb-to-building installation'' or ''on site wiring'' are eligible if they are used to extend service provider facilities to the point where such facilities meet customer-owned terminal equipment or wiring. If the additional build-out is not owned or controlled by the service provider, it will not be eligible as service provider deployment costs. In contrast, consistent with current RHC program rules, ''inside wiring'' and ''internal connections'' are not eligible for support.

118. Because upfront charges for build-out costs can be significant, we limit eligibility for such upfront charges to consortium applications. Our experience of over a decade with the RHC Telecommunications Program suggests that individual HCPs are unlikely to attract multiple bids, which would constrain prices. As HCPs themselves acknowledge, and as we learned in the Pilot Program, consortium applications are more likely to attract multiple bidders, due to the more significant dollar amounts associated with larger projects. Furthermore, we anticipate that individual HCPs will benefit from participating in a consortium in numerous ways, including pooling administrative resources (*e.g.* for the competitive bidding process), and increased opportunities for cooperation with other HCPs within their state or region. Consortia seeking funding for build-out costs must apply and undergo the competitive bidding process through the consortium application process. As in the Pilot Program, an RFP that includes a build-out component need not be *limited* to such costs (for example, some HCPs included in the RFP may not need any additional build-out to be served, but rather only need discounts on recurring services). We expect HCPs to select a proposal that includes carrier build-out costs only if that proposal is the most cost-effective option. In addition, upfront charges for build-out are subject to the limitations.

*B. Eligible Equipment*

119. Discussion. We will provide support for network equipment necessary to make a broadband service functional in conjunction with providing support for the broadband service. In addition, for consortium applicants, we will provide support for equipment necessary to manage, control, or maintain a broadband service or a dedicated health care broadband network. Equipment support is not available for networks that are not dedicated to health care. We conclude that providing support for such equipment is important to advancing our goals of increasing access to broadband for HCPs and fostering the development and maintenance of broadband health care networks, for three reasons.

120. First, providing support for equipment will help HCPs to upgrade to higher bandwidth services. USAC states that Pilot Program funding for equipment allowed such HCPs to upgrade bandwidth without restrictions based on what their existing equipment would allow. We note that small rural hospitals and clinics often lack the IT expertise to know that they will need new equipment to use new or upgraded broadband connections, and finding funding to pay for the equipment can cause delays.

121. Second, support for the equipment necessary to operate and manage dedicated broadband health care networks can facilitate efficient network design. USAC states that urban centers, where most specialists are located, are natural ''hubs'' for telemedicine networks, but the cost of equipment required to serve as a hub

can be a barrier for these facilities to serve as hubs. In the Pilot Program, funding network equipment eliminated this barrier to entry. OHN explains that connecting to urban hubs can also reduce the need for rural sites to manage firewalls at their locations, which allows the rural sites to reduce equipment costs while adhering to security industry best practices and standards.

122. Finally, support for network equipment can also help HCPs ensure that their broadband connections maintain the necessary reliability and quality of service, which can be challenging even if the HCP has a service level agreement (SLA) with its telecommunications provider. Support for network equipment has enabled some Pilot projects to set up Network Operations Centers (NOCs) that can manage service quality and security in a cost-effective manner for all of the HCPs on the network. The NOC can proactively monitor all circuits and contact both the service provider and HCP whenever the status of a link drops below the conditions specified in the SLA. This allows proactive monitoring to find and deal with adverse network conditions ''in real time and before they have a chance to impact the delivery of patient care.'' A HCP-operated NOC in some cases may be more cost-effective for larger networks (*e.g.,* statewide, or even multi-state networks), particularly when the NOC may be monitoring and managing circuits from multiple vendors.

123. We do not express a preference for single- or multi-vendor networks here, nor do we suggest that it is always more efficient for a dedicated health broadband network to have its own NOC. For example, a network that chooses to obtain a single-vendor solution and obtain NOC service from that vendor may receive support for the NOC service as a broadband service, if that solution is the most cost-effective. Our actions simply facilitate the ability of a consortium to operate its own NOC, if that is the most cost-effective option.

124. Eligible equipment costs include the following:

- Equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment. This includes equipment required to light dark fiber, or equipment necessary to connect dedicated health care broadband networks or individual HCPs to middle mile or backbone networks;
- Computers, including servers, and related hardware (*e.g.,* printers, scanners, laptops) that are used exclusively for network management;
- Software used for network management, maintenance, or other network operations, and development of software that supports network management, maintenance, and other network operations;
- Costs of engineering, furnishing (*i.e.,* as delivered from the manufacturer), and installing network equipment; and
- Equipment that is a necessary part of HCP-owned facilities.

125. Support for network equipment is limited to equipment purchased or leased by an eligible HCP that is used for health care purposes. We do not authorize support, for example, for network equipment utilized by telecommunications providers in the ordinary course of business to operate and manage networks they use to provide services to a broader class of enterprise customers, even if eligible HCPs are utilizing such services. Non-recurring costs for equipment purchases are subject to the limitations on all upfront charges.

*C. Ineligible Costs*

126. Services and equipment eligible for support under the Healthcare Connect Fund are limited to those listed in this *Order*. For administrative clarity, however, we also list the following specific examples of costs that are not supported.

1. Equipment or Services Not Directly Associated With Broadband Services

127. Discussion. In keeping with our goals to increase access to broadband, foster development of broadband health care networks, and maximize cost-effectiveness, we provide support under the Healthcare Connect Fund for the cost of equipment or services necessary to make a *broadband service* functional, or to manage, control, or maintain a *broadband service* or a *dedicated health care broadband network*. Certain equipment (*e.g.,* switches, routers, and the like) are necessary to make the broadband service functional—conceptually, these are ''inputs'' into the broadband service. Other equipment or services (*e.g.,* telemedicine carts, or videoconferencing equipment, or even a simple health care-related application) ''ride over'' the broadband connection—*i.e.,* in those cases, the broadband connectivity is an ''input'' to making the equipment or service functional. In this latter case, the equipment or service is not eligible for support. This distinction is consistent with that utilized in the Pilot Program.

128. In particular, costs associated with general computing, software, applications, and Internet content development are not supported, including the following:

- Computers, including servers, and related hardware (*e.g.,* printers, scanners, laptops), (unless used exclusively for network management, maintenance, or other network operations);
- End user wireless devices, such as smartphones and tablets;
- Software (unless used for network management, maintenance, or other network operations);
- Software development (excluding development of software that supports network management, maintenance, and other network operations);
- Helpdesk equipment and related software, or services (unless used exclusively in support of eligible services or equipment);
- Web hosting;
- Web site portal development;
- Video/audio/web conferencing equipment or services; and
- Continuous power source.

129. Furthermore, costs associated with medical equipment (hardware and software), and other general HCP expenses are not supported. For example, the following is not supported:

- Clinical or medical equipment;
- Telemedicine equipment, applications, and software;
- Training for use of telemedicine equipment;
- Electronic medical records systems; and
- Electronic records management and expenses.

2. Inside Wiring/Internal Connections

130. Discussion. The American Telemedicine Association requests that the Commission provide support for ''internal wiring.'' The Healthcare Connect Fund will provide support for service provider build-out to the customer demarcation point, and for network equipment necessary to make a broadband connection functional. We conclude that support is better targeted at this time toward providing broadband connectivity *to* the HCP rather than internal networks *within* HCP premises. The record does not indicate that small HCPs (such as clinics) likely will incur large expenses for inside wiring or internal connections in order to utilize their broadband connectivity. For larger institutions such as hospitals, however, the cost of providing discounts for internal connections could be substantial. Furthermore, as the Commission has acknowledged, it can be difficult to distinguish from ''internal

connections'' and ineligible computers or other peripheral equipment. In the E-rate context, the Commission relied on the congressional directive that the Fund provide connectivity all the way to *classrooms*. There is no similar statutory directive with respect to HCPs. For these reasons, we decline to provide support for inside wiring or internal connections under the Healthcare Connect Fund.

3. Administrative Expenses

131. The *NPRM* proposed to provide limited support for administrative expenses under the proposed Health Infrastructure Program, but not for the proposed Broadband Services Program. The Commission acknowledged that some parties had argued that planning and designing network infrastructure deployment can place a burden on HCPs. The Commission also recognized, however, that ''the primary focus of the program should be to fund infrastructure and not project administration.''

132. Discussion. Consistent with the objectives of streamlining oversight of the program and ensuring fiscal responsibility, we decline to fund administrative expenses associated with participation in the Healthcare Connect Fund. We are taking significant steps to streamline and simplify the application process, which will lessen the time and resources needed to participate in the program. Moreover, because we expect that most HCPs in the new program will choose to purchase services rather than construct and own facilities, the rationale for funding of administrative expenses is lessened.

133. The Commission has recognized that administrative expenses of organizing networks and applying for universal service support can be substantial. In response, we are taking steps throughout this *Order* to minimize the administrative burden of participating in the Healthcare Connect Fund. First, we put in place a streamlined application process that facilitates consortium applications, which should enable HCPs to file many fewer applications and to share the administrative costs of all aspects of participation in the program. Second, we adopt a uniform flat-rate discount to simplify the calculation of support, particularly when compared with the urban/rural differential approach of the Telecommunications Program. Third, we enable multi-year funding commitments, long-term arrangements (*e.g.,* IRUs and pre-paid leases), and the use of existing MSAs. Fourth, we expand eligibility to include all HCPs, with rules in place to ensure a reasonable balance of rural and non-rural sites within health care networks. In the Pilot Program, HCPs that did not meet our long-standing definition of ''rural'' HCPs frequently provided administrative and technical support to the consortia, thereby reducing the burden on individual HCPs. Finally, we eliminate the competitive bidding requirement for applicants seeking support for $10,000 or less of total undiscounted eligible expenses for a single year. We find that the combination of these reforms, among others, should significantly reduce the administrative burden on participants in terms of the complexity, volume, and frequency of filings, thereby addressing concerns raised by some commenters regarding the administrative burdens of participating in the program. In contrast, if we were to provide direct support for administrative expenses, it would necessitate additional and more complex application requirements, guidelines, and other administrative controls to protect such funding from waste, fraud, and abuse. This would significantly increase the administrative burden on USAC and on applicants as well.

134. We recognize that many commenters support the provision of support for administrative expenses. Some commenters suggest that the funding of reasonable administrative expenses is necessary to ensure participation in the program. However, experience with the existing programs suggests that HCPs will participate even without the program funding administrative expenses. Neither the Telecommunications nor Pilot Programs fund administrative expenses, but both programs have significant participation. The number of participating HCPs in the Telecommunications Program has grown by nearly 10 percent year-over-year for the past five years. Similarly, the Pilot Program has experienced substantial and sustained interest with just over 3,800 HCP sites receiving funding commitments. We expect that the participation in the RHC support mechanism will only increase with the implementation of the Healthcare Connect Fund and its more streamlined administrative process.

135. In addition, commenters have not explained how we could readily distinguish reasonable from unreasonable administrative expenses and ensure fiscal responsibility and cost effective use of the finite support available for eligible HCPs. Without a clear standard, there would be increased complexity and cost in policing the reimbursement of these expenses to guard against waste, fraud, and abuse. By reducing the administrative burden, rather than directly funding administrative expenses, we seek to facilitate increased participation while still ensuring fiscal responsibility and the efficient use of scarce universal service funding.

136. Consistent with the approach taken by the Commission in the *Pilot Program Selection Order,* 73 FR 4573, January 25, 2008, we conclude that administrative expenses will not be eligible for support under the Healthcare Connect Fund. Ineligible expenses include, but are not limited to, the following expenses:

- Personnel costs (including salaries and fringe benefits), except for personnel costs in a consortium application that directly relate to designing, engineering, installing, constructing, and managing the dedicated broadband network. Ineligible costs of this category include, for example, personnel to perform program management and coordination, program administration, and marketing.
- Travel costs, except for travel costs that are reasonable and necessary for network design or deployment and that are specifically identified and justified as part of a competitive bid for a construction project.
- Legal costs.
- Training, except for basic training or instruction directly related to and required for broadband network installation and associated network operations. For example, costs for end-user training, such as training of HCP personnel in the use of telemedicine applications, are ineligible.
- Program administration or technical coordination (*e.g.,* preparing application materials, obtaining letters of agency, preparing request for proposals, negotiating with vendors, reviewing bids, and working with USAC) that involves anything other than the design, engineering, operations, installation, or construction of the network.
- Administration and marketing costs (*e.g.,* administrative costs; supplies and materials (except as part of network installation/construction); marketing studies, marketing activities, or outreach to potential network members; evaluation and feedback studies).
- Billing expenses (*e.g.,* expense that service providers may charge for allocating costs to each HCP in a network).
- Helpdesk expenses (*e.g.,* equipment and related software, or services); technical support services that provide more than basic maintenance.

4. Cost Allocation for Ineligible Entities, Sites, Services, or Equipment

137. Discussion. Costs associated with ineligible sites or ineligible components of services or equipment are ineligible for support, except as otherwise specified in this *Order*. Ineligible sites, however, may participate in consortia and dedicated broadband health networks supported through this program, as long as they pay a fair share of the undiscounted costs associated with the consortium's funding request. Similarly, an applicant is only eligible to receive support for the eligible components of a service or a piece of equipment.

138. There are a wide variety of contexts in which it may be more cost-effective for eligible HCPs to share costs with ineligible entities, or to procure a service or piece of equipment that includes both eligible and ineligible components. The Commission has allowed such cost-sharing in the past in the RHC Telecommunications Program and the Pilot Program, and we will allow it in the Healthcare Connect Fund. Such permissible cost-sharing includes the following:

• *Sharing with ineligible entities.* In the case of statewide or regional health care networks, it may be useful for health care purposes to have both eligible and ineligible HCPs participate in the same network, and share certain backbone or network equipment costs between all participants in the network. Having both eligible and ineligible entities contribute to shared costs may lead to lower overall costs for the eligible HCPs, and enables HCPs to benefit from connections to a greater number of other HCPs, including for-profit HCPs that are not eligible for funding under section 254 but nevertheless play an important role in the overall health care system. The Commission has previously found that the resale prohibition does not prevent Pilot Program networks from ''sharing'' facilities with for-profit entities that pay their ''fair share'' of network costs (*i.e.,* that do not receive discounts provided to eligible HCPs, but instead pay their full *pro rata* undiscounted share as determined by the portion of network capacity used).

• *Allocating cost between eligible and ineligible components.* A product or service provided under a single price may contain both eligible and ineligible components. For example, a service provider may provide a broadband internet access service (eligible) and, as a component of that service, include web hosting (ineligible). While it may be simpler to buy the eligible and ineligible components separately, in some instances it is more cost-effective for HCPs (and the Fund) to buy the components as a single product or service. In such cases, applicants may need guidance on if, and how, they should allocate costs between the eligible and ineligible components.

• *Excess capacity in fiber construction.* In the *NPRM,* the Commission noted that it is customary to build excess capacity when deploying high-capacity fiber networks, because the cost of adding additional fiber to the conduit is minimal. In the Pilot Program, the Commission found that a Pilot participant could not ''sell'' network capacity supported by Pilot funding, but could ''share'' network capacity with ineligible entities paying a fair share of network costs attributable to the portion of network capacity used. Consortia that seek support to construct and own their own fiber networks may wish to put in extra fiber strands during construction and make the excess capacity available to other users.

• *Part-time eligible HCPs.* Under current rules, entities that provide eligible health care services on a part-time basis are allowed to receive prorated support commensurate with their provision of eligible health care services. For example, if a doctor operates a non-profit rural health clinic on a non-profit basis in a rural community one day per week or during evenings in the local community center, that community center is eligible to receive prorated support, because it serves as a ''rural health clinic'' on a part-time basis.

139. We conclude that eligible HCP sites may share costs with ineligible sites, as long as the ineligible sites pay a ''fair share'' of the costs. We use ''fair share'' here as a term of art that, in general, refers to the price or cost that an ineligible site must pay to participate in a supported network, or share supported services and equipment, with an eligible HCP. To determine fair share, an applicant is required to apply the following principles:

• First, if the service provider charges a separate and independent price for each site, an ineligible site must pay the full undiscounted price. For example, if a consortium has negotiated certain rates that are applicable to all sites within the consortium, an ineligible HCP site must pay the full price without receiving a USF discount. Similarly, if the consortium has received a quote from the service provider for the individualized costs of serving each member of the consortium, an ineligible member must pay the full cost without receiving a USF discount.

• Second, if there is no separate and independent price for each site, the applicant must prorate the undiscounted price for the ''shared'' facility (including any supported maintenance and operating costs) between eligible and ineligible sites on a proportional fully-distributed basis, and the applicant may seek support for only the portion attributable to the eligible sites. Applicants must make this cost allocation using a method that is based on objective criteria and reasonably reflects the eligible usage of the shared facility. For example, a network may choose to divide the undiscounted price of the shared facility equally among all member sites, and require ineligible sites to pay their full share of the price. Other possible metrics, depending on the services utilized, may include time of use, number of uses, amount of capacity used, or number of fiber strands. The applicant bears the burden of demonstrating the reasonableness of the allocation method chosen.

140. Because we define eligible services and equipment for the Healthcare Connect Fund broadly in this *Order,* we do not anticipate that applicants will encounter many situations in which they purchase or lease a single service or piece of equipment that includes both eligible and ineligible components. Nonetheless, we also provide guidelines herein for allocating costs when a single service or piece of equipment includes an ineligible component. Applicants seeking support for a service or equipment that includes an ineligible component must also explicitly request in their RFP that service providers should also provide pricing for a comparable service or piece of equipment that includes only eligible components. If the selected provider also submits a price for the eligible component on a stand-alone basis, the support amount is capped at the stand-alone price of the eligible component. If the service provider does not offer the eligible component on a stand-alone basis, the full price of the entire service or piece of equipment must be taken into account, without regard to the value of the ineligible components, when determining the most cost-effective bid.

141. We delegate authority to the Bureau to issue further guidelines, as needed, to interpret the cost allocation methods or provide guidance on how to apply the methods to particular factual situations.

142. Applicants must submit a written description of their allocation method(s) to USAC with their funding requests.

Allocations must be consistent with the principles. If ineligible entities participate in a network, the allocation method must be memorialized in writing, such as a formal agreement among network members, a master services contract, or for smaller consortia, a letter signed and dated by all (or each) ineligible entity and the Consortium Leader. For audit purposes, applicants must retain any documentation supporting their cost allocations for a period consistent with the recordkeeping rules.

*D. Limitations on Upfront Payments*

143. Discussion. Support for upfront payments can play an important part in ensuring that HCPs can efficiently obtain the broadband connections they need in a cost-effective manner. We therefore adopt a rule providing support for upfront payments, but include certain limitations to ensure the most cost-effective use of Fund support and to deter waste, fraud, and abuse. The limitations in this section apply to all non-recurring costs, other than reasonable and customary installation charges of up to $5,000. USAC reports that in both the ''Primary'' (Telecommunications and Internet Access and Pilot Programs, service providers do not typically assess ''installation charges'' in excess of $5,000 if no new build-out is required to provide a service (*i.e.,* the ''installation charge'' is entirely for the cost of ''turning on'' services over existing facilities). Therefore, we find that it is appropriate to treat installation charges of up to $5,000 as ''ordinary'' installation charges, and apply limitations only to charges above that amount.

144. The limitations are as follows. First, upfront payments associated with services providing a bandwidth of less than 1.5 Mbps (symmetrical) are not eligible for support. By their nature, upfront payments are intended to amortize the cost of new service deployment or installation that will be enjoyed for years in the future; in other words, HCPs should continue to reap the benefits from the upfront payments beyond the funding year in which support is requested. We do not believe it is an efficient use of the Healthcare Connect Fund to support upfront payments for speeds which may increasingly become inadequate for HCP needs in the near future.

145. Second, we limit support for upfront payments to consortium applications, to create greater incentives for HCPs to join together in consortia and thereby obtain the pricing benefits of group purchasing and economies of scale, as demonstrated in the Pilot Program.

146. Third, we impose a $150 million annual limitation on total commitments for upfront payments and multi-year commitments. We do so in order to limit major fluctuations in Fund demand, although we anticipate that the $150 million should be sufficient to meet demand for upfront payments given the other limitations we impose. Fourth, we will require that consortia prorate support requested for upfront payments over at least three years if, on average, more than $50,000 in upfront payments is requested per HCP site in the consortium. Fifth, upfront payments must be part of a multi-year contract. At $50,000 per site, $50 million per year would provide upfront support to 1,000 HCP sites. Given that total participation in the Pilot Program since 2006 has been approximately 3,900 providers to date, we believe this is an adequate level of funding to meet HCP needs in the immediate future; we can revisit this conclusion if experience under the new program proves otherwise.

147. We do not adopt a per-provider cap for upfront payments at this time. Although most HCPs in the Pilot Program were able to obtain any necessary build-out at a cost below $50,000, a small percentage of HCPs incurred very high build-out costs. Requiring these HCPs to apply as part of consortia should help them to obtain service at a lower cost; however, adopting a per-provider cap could have the unintended consequence of excluding the highest-cost HCPs from such consortia. Although we do not adopt a per-provider cap, we note that because the HCP will be responsible for paying a substantial contribution towards the cost of services received (*i.e.,* 35 percent), we anticipate that consortia will have every incentive to obtain the lowest prices possible.

148. Finally, consortia that seek certain types of upfront payments will be subject to additional reporting requirements and other safeguards to ensure effective use of support.

*E. Eligible Service Providers*

149. Discussion. We conclude that eligible service providers for the Healthcare Connect Fund shall include any provider of equipment, facilities, or services that are eligible for support under the program, provided that the HCP selects the most cost-effective option to meet its health care needs. We reiterate that eligible services may be provided through any available technology, consistent with our competitive neutrality policy. Commenters generally support a broad definition of eligible service providers, and state that allowing a wide variety of vendors will provide more competing options and thus will be more cost-effective. We note that the Pilot Program, which allowed similar flexibility, had over 120 different vendors win contracts to provide services.

150. We also adopt the *NPRM* proposal to allow eligible HCPs to receive support for the lease of dark or lit fiber from any provider, including dark fiber that may be owned by state, regional or local governmental entities, and conclude that eligible vendors are not limited to telecommunications carriers or other types of entities historically regulated by the Commission. Both non-profit (*e.g.,* Internet2 and NLR) and commercial service providers are eligible to participate. We will not allow a state government, private sector, or other non-profit entity to simultaneously act as a Consortium Leader/consultant *and* potential service provider, in order to preserve the integrity of the competitive bidding process. We emphasize that HCPs must select the most cost-effective bid, and are under *no* obligation to select a particular vendor merely due to its ''non-profit'' status or its receipt of other federal funding (*e.g.,* BTOP grants, or Connect America Fund support), although we anticipate that providers who receive other federal funding may be in a position to provide services to HCPs at competitive rates.

**V. Funding Process**

151. USAC shall, working with the Bureau, develop the necessary application, competitive bidding, contractual, and reporting requirements for participants to implement the requirements to ensure the objectives of the program are met.

*A. Pre-Application Steps*

1. Creation of Consortia

152. The Healthcare Connect Fund will provide support for both individual applications and consortium applications. With the reforms we adopt, we encourage eligible entities to seek funding from the new program by forming consortia with other HCPs in order to obtain higher speed and better quality broadband and to recognize efficiencies and lower costs. For purposes of Healthcare Connect Fund, a ''consortium'' is a group of multiple HCP sites that choose to request support as a single entity.

a. Designation of a Consortium Leader

153. Discussion. Each consortium seeking support from the Healthcare Connect Fund must identify an entity or organization that will be the lead entity (the ''Consortium Leader''). As a preliminary matter, we note that the *consortium* and the *Consortium Leader* can be the same legal entity, but are not required to be. For example, the consortium may prefer to designate one of its HCP members as the Consortium Leader or an ineligible state or Tribal government agency or non-profit organization.

154. The consortium need not be a *legal* entity, although the consortium members may wish to form as a legal entity for a number of reasons. For example, if the consortium itself is to be legally and financially responsible for activities supported by the Fund (*i.e.* serve as the ''Consortium Leader''), the consortium should constitute itself as a legal entity. In addition, the consortium may wish to constitute itself as a legally recognized entity to simplify contracting with vendors (*i.e.* if the consortium is not a legal entity, each individual participant may need to sign an individual contract with the service provider, or one of the consortium members may need to enter into a master contract on behalf of all of the other members).

155. The Consortium Leader may be the consortium itself (if it is constituted as a legal entity), an eligible HCP participating in the consortium, or an ineligible state organization, public sector (governmental) entity (including a Tribal government entity), or non-profit entity. An eligible HCP may serve as the Consortium Leader and simultaneously receive support. If an ineligible entity serves as the Consortium Leader, however, the ineligible entity is prohibited from receiving support from the Healthcare Connect Fund, and the full value of any discounts, funding, or other program benefits secured by the ineligible entity must be passed on to the consortium members that are eligible HCPs.

156. Certain state organizations, public sector entities (including Tribal government entities), or non-profit entities may wish to perform multiple roles on behalf of consortia, including (1) serving as lead entities; (2) providing consulting assistance to consortia; and/or (3) serving as a service provider (vendor) of eligible services or equipment for which consortia are seeking support. Potential conflict of interest issues arise in the competitive bidding process, however, if an entity serves a dual role as both Consortium Leader/consultant *and* potential service provider. The potential conflict is that the selection of the service provider may not be fair and open but may, in fact, provide an unfair advantage to the lead entity as service provider.

157. For that reason, we conclude that state organizations, public sector entities, or non-profit entities may serve as lead entities or provide consulting assistance to consortia if they do not participate as potential vendors during the competitive bidding process. Conversely, if such entities wish to provide eligible services or equipment to consortia, they may not simultaneously serve as project leaders, and may not provide consulting or other expertise to the consortium to assist it in developing its request for services. This restriction does not prohibit eligible HCPs from conducting general due diligence to determine what services are needed and to prepare for an RFP. Part of such due diligence may involve reaching out to known service providers—including state or other public sector entities—that serve the area to determine what services are available. Nor does the restriction prevent a service provider, once selected through a fair and open competitive bidding process, from assisting an eligible HCP with implementing the purchased services.

158. We recognize that certain state governmental entities, for example, may be large enough to institute an organizational and functional separation between staff acting as service providers and staff providing application assistance. Consistent with current practice in the E-rate program, we will allow state organizations, public sector entities, or non-profit entities, if they so choose, to obtain an exemption from this prohibition by making a showing to USAC that they have set up an organizational and functional separation. This exemption, however, must be obtained before the consortium begins preparing its request for services. Examples of appropriate documentation for such a showing include organizational flow charts, budgetary codes, and supervisory administration.

159. The Consortium Leader's responsibilities include the following:

• *Legal and Financial Responsibility for Supported Activities.* The Consortium Leader is the legally and financially responsible entity for the conduct of activities supported by the Fund. By default, the Consortium Leader will be the responsible entity if audits or other investigations by USAC or the Commission reveal violations of the Act or our rules by the consortium, with the individual consortium members being jointly and severally liable if the Consortium Leader dissolves, files for bankruptcy, or otherwise fails to meet its obligations. We recognize that in some instances, a consortium may wish to have a Consortium Leader serve only in an administrative capacity and to have the consortium itself, or its individual members, retain ultimate legal and financial responsibility. Except for the responsibilities, we will allow consortia to have flexibility to allocate legal and financial responsibility as they see fit, provided that this allocation is memorialized in a formal written agreement between the affected parties (*i.e.* the Consortium Leader, and the consortium as a whole and/or its individual members), and the written agreement is submitted to USAC for approval with or prior to the Request for Services (Form 461). The agreement should clearly identify the party(ies) responsible for repayment if USAC is required, at a later date, to recover disbursements to the consortium due to violations of program rules. USAC is directed to provide, in writing by the expiration of the 28-day competitive bidding period, either approval or an explanation as to why the agreement does not provide sufficient clarity on who will be responsible for repayment. If USAC provides such comments, it shall provide the Consortium Leader with a minimum of 14 calendar days to respond. USAC is prohibited from issuing a funding commitment to the consortium until the Consortium Leader either takes on the default position as responsible entity, or provides an agreement that adequately identifies alternative responsible party(ies).

• *Point of Contact for the FCC and USAC.* The Consortium Leader is responsible for designating an individual who will be the ''Project Coordinator'' and serve as the point of contact with the Commission and USAC for all matters related to the consortium. The Consortium Leader is responsible for responding to Commission and USAC inquiries on behalf of the consortium members throughout the application, funding, invoicing, and post-invoicing period.

• *Typical Applicant Functions, Including Forms and Certifications.* The Consortium Leader is responsible for submitting program forms and required documentation and ensuring that all information and certifications submitted are true and correct. This responsibility may not contractually be allocated to another entity. The Consortium Leader may be asked during an audit or other inquiry to provide documentation that supports information and certifications

provided. The Consortium Leader must also collect and retain a Letter of Agency (LOA) from each member.

• *Competitive Bidding and Cost Allocation.* The Consortium Leader is responsible for ensuring that the competitive bidding process is fair and open and otherwise complies with Commission requirements. If costs are shared by both eligible and ineligible entities, the Consortium Leader must also ensure that costs are allocated in a manner that ensures that only eligible entities receive the benefit of program discounts.

• *Invoicing.* The Consortium Leader is responsible for the invoicing process, including certifying that the participant contribution has been paid and that the invoice is accurate.

• *Recordkeeping, Site Visits, and Audits.* The Consortium Leader is also responsible for compliance with the Commission's recordkeeping requirements, and coordinating site visits and audits for all consortium members.

b. Participating Health Care Providers

160. Next, the consortium should identify all HCPs who will participate. The Consortium Leader will need to provide this information to USAC in order to request program support. We intend for eligible HCPs to have broad flexibility in organizing consortia according to their health care needs. For example, a consortium may be a pre-existing organization formed for reasons unrelated to universal service support *(e.g.* a regional telemedicine network, a statewide health information exchange), or a group newly formed for the purpose of applying for Healthcare Connect Fund support. Consortium members may be affiliated (formally or informally) or unaffiliated. Ineligible HCPs may participate in consortia, although they are not eligible to receive support and must pay full cost (fair share) for all services received through the consortium.

c. Letters of Agency

161. Discussion. The letter of agency requirement helps ensure that participating entities are eligible to receive support, and that the HCPs have given the project leaders the necessary authorization to act on their behalf. After considering our experience in the Pilot Program, and reviewing the comments filed regarding letters of agency, we conclude that each Consortium Leader must secure the necessary authorizations through an LOA from each HCP seeking to participate in the applicant's network that is *independent* of the Consortium Leader. LOAs are not required for those participating HCP sites that are owned or otherwise controlled by the Consortium Leader (and thus are not ''independent''). Similarly, one LOA is sufficient for multiple HCP sites that are owned or otherwise controlled by a single consortium member.

162. We adopt an approach that creates a two-step process of LOAs: in the first step, a Consortium Leader must obtain LOAs from members to seek bids for services, and in the second step, the Leader must obtain LOAs to apply for funding from the program. This two-step approach addresses an issue that arose in the Pilot Program, where some prospective member HCPs were reluctant to provide LOAs that would commit them to participate in a consortium network before they knew the pricing of services from prospective bidders. Under the Healthcare Connect Fund, we require that each Consortium Leader secure authorization, the required certifications, and any supporting documentation from each consortium member (i) to submit the request for services on its behalf (Form 461) and prepare and post the request for proposal on behalf of the member for purposes of the Healthcare Connect Fund and (ii) to submit the funding request (Form 462) and manage invoicing and payments, on behalf of the member. The first authorization is required prior to the submission of the request for services (Form 461), while the second authorization is only required prior to the submission of the request for funding (Form 462). An applicant may either secure both required authorizations upfront or secure each authorization as needed. Consortium Leaders may also obtain authorization, the required certifications, and any supporting documentation from each member to submit Form 460, if needed, to certify the member's eligibility to participate in the Healthcare Connect Fund. If the Consortium Leader does not obtain such authorization for a given member, that member will have to submit its own Form 460. In addition, we delegate authority to the Bureau to develop model language for the LOA required for each authorization.

163. In addition to the necessary authorizations, the LOA must include, at a minimum, the name of the entity filing the application (*i.e.,* lead applicant or consortium leader); name of the entity authorizing the filing of the application (*i.e.,* the participating HCP/consortium member); the physical location of the HCP/consortium member site(s); the relationship of each site seeking support to the lead entity filing the application; the specific timeframe the LOA covers; the signature, title and contact information (including phone number, mailing address, and email address) of an official who is authorized to act on behalf of the HCP/consortium member; signature date; and the type of services covered by the LOA. For HCPs located on Tribal lands, if the health care facility is a contract facility that is run solely by a Tribal Nation, the appropriate Tribal leader, such as the Tribal Chairperson, President, or Governor, or Chief, shall also sign the LOA, unless the health care responsibilities have been duly delegated to another Tribal government representative. In all instances, electronic signatures are permissible.

164. The approach we adopt addresses many of the concerns expressed by commenters, while still ensuring applicants have the necessary authority to act on behalf of their members. Some commenters correctly point out that under the Pilot Program, an HCP was often reluctant or unable to execute an LOA that required the HCP to agree to participate in a network before accurate pricing was available. Other commenters stressed that requiring LOAs as part of the Form 465 submission was a net benefit because it enabled the project to ''vet'' the eligibility of interested HCPs at the outset of the application process. We conclude that the adopted approach provides flexibility to allow consortium applicants to tailor the LOA process to meet the needs of their members, within the necessary constraints.

2. Determination of Health Care Provider Eligibility

165. Discussion. Consistent with other measures we adopt to improve the efficiency and operation of the Healthcare Connect Fund, we institute a new process for obtaining faster eligibility determinations from USAC by permitting HCPs to submit Form 460 at any time during the funding year to certify to the eligibility of particular sites. By separating the eligibility determination from the competitive bidding process, we provide HCPs with the option of receiving an eligibility determination before they move forward with preparing an application for funding. HCPs who have previously received an eligibility determination from USAC (*i.e.* HCPs who already participate in the existing rural health care programs) are not required to submit a Form 460 prior to submission of a Form 461. All HCPs, however, are required to submit an updated Form 460 within 30 days of a material change, such as a change in the HCP's name, site

location, contact information or eligible entity type, or for non-rural hospitals, an increase in the number of licensed patient beds such that the hospital goes from having fewer than 400 licensed beds to 400 or more licensed beds.

166. For each HCP listed, applicants will be required to provide the HCP's address and contact information, identify the eligible HCP type, provide an address for each physical location that will receive supported connectivity, provide a brief explanation for why the HCP is eligible under the Act and the Commission's rules and orders, and certify to the accuracy of this information under penalty of perjury. Consortium leaders should obtain supporting information and/or documents to support eligibility for each HCP when they collect LOAs; leaders also may be asked for this information during an audit or investigation. USAC should notify each applicant of its determination (or whether it needs additional time to process the form) within 30 days of receipt of Form 460. We caution applicants that it is their obligation to submit accurate information and certifications regarding their eligibility. Because HCP eligibility is limited by the Act, the Commission does not have discretion to waive eligibility requirements, and must recover any support erroneously disbursed to ineligible entities. We direct USAC to assign a unique identifying number to each HCP location in order to facilitate tracking of the location throughout the application process.

3. Technology Planning

167. Discussion. We encourage all applicants to carefully evaluate their connectivity needs before submitting an application. We decline at this time to require applicants in the Healthcare Connect Fund to submit technology plans with their requests for service, but we may re-evaluate this decision in the future based on experience with the new program. Our goal is reduce administrative burdens and delay associated with participating in the Healthcare Connect Fund, especially for the HCPs with the fewest resources and greatest need to participate.

168. The record indicates that HCPs are a diverse group with a diverse set of needs. Our intent, consistent with precedent, is to allow HCPs to identify their specific broadband needs, which, together with the competitive bidding requirements and the required HCP 35 percent contribution, will help ensure that universal services funds are used most cost-effectively. We recognize that the amount of planning required will vary depending on a number of factors, such as the HCP's size and planned utilization of health IT, and that the amount of IT expertise and other resources available for formal planning will vary widely between different types of HCPs. In the planning process, applicants may wish to consider questions such as the following:

- What applications do we plan to use over our broadband connection (*e.g.* exchange of EHRs, videoconferencing, image transfers, and other forms of telehealth or telemedicine)? How do these applications fit into our overall strategy to improve care and/or generate cost savings? How many users do we need to support for each application?
- What broadband services do we need to support the planned applications and users?
- Do we have a plan to train our staff to use the applications?
- Do we have the necessary IT resources to deploy the broadband services and applications?
- Have we considered the benefits and drawbacks of short-term versus multi-year contracts (*e.g.* cost savings in long-term contracts versus potential decreases in prices, technology advances, and termination fees)?
- How will we pay for the undiscounted portion of supported services and equipment, and any unsupported costs?
- Should we consider joining with other HCPs to apply as a consortium? If a consortium, should we include other HCPs?
- What resources are available to help us?

169. We encourage prospective applicants to consult available resources, including those previously published by the Commission and resources available through HHS, in conducting their technology planning.

4. Preparation for Competitive Bidding

170. Discussion. The Commission has defined ''cost-effective'' for purposes of the existing RHC support mechanism as ''the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the HCP deems relevant to * * * choosing a method of providing the required health care services.'' The Commission does not require HCPs to use the lowest-cost technology because factors other than cost, such as reliability and quality, may be relevant to fulfill their health care needs. Furthermore, initially higher cost options may prove to be lower in the long-run, by providing useful benefits to telemedicine in terms of future medical and technological developments and maintenance. Therefore, unlike the E-rate program, the RHC program does not require participants to consider price as *the* primary factor in selecting a service provider. Instead, applicants identify the factors relevant for health care purposes, and then select the lowest price bid that satisfies those considerations. We conclude that continuing this approach is appropriate for the Healthcare Connect Fund.

171. Applicants must develop appropriate evaluation criteria for selecting the winning bid *before* submitting a request for services to USAC to initiate competitive bidding. The evaluation criteria should be based on the Commission's definition of ''cost-effective,'' and include the most important criteria needed to provide health care, as determined by the applicant. For smaller applicants (*e.g.* those requesting support for recurring monthly costs for a single T–1 line), criteria such as bandwidth, quality of transmission, reliability, previous experience with the service provider, and technical support are likely to be sufficient. For more complex projects (including projects that involve designing or constructing a new network or building upon an existing network), additional relevant non-cost factors may include prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including solicitation compliance; and environmental objectives (if appropriate).

172. Typically, an applicant will develop a scoring matrix, or a list of weighted evaluation criteria, that it will use in evaluating bids. Once the applicant has developed its evaluation criteria, it should assign a weight to each in order of importance. No single factor may receive a weight that is greater than price. For example, if the HCP assigns a weight of 40 percent to cost, other factors must receive a weight of 40 percent or less individually (with the total weight equaling 100%). Each bid received should be scored against the determined criteria, ensuring they are all evaluated equally. All applicants who are not exempt from competitive bidding will be required to submit bid evaluation documentation with their funding requests.

5. Source(s) for Undiscounted Portion of Costs

173. Although applicants are not required to submit documentation regarding sources for the undiscounted portion of costs until they complete the competitive bidding process, they should begin identifying possible

sources for their 35 percent as early as possible. This is especially important for larger consortia that intend to undertake high-dollar projects. In the Pilot Program, many projects experienced delays due, in part, to difficulty in obtaining the required contribution.

6. FCC Registration Number (FRN)

174. All applicants must obtain FCC registration numbers (FRNs), if they do not have one already. An FRN is a 10-digit number that is assigned to a business or individual registering with the FCC, and is used to uniquely identify the business or individual in all of its transactions with the FCC. Obtaining an FRN is a quick, online process that can typically be completed in a manner of minutes through the Commission's Web site. Consortium applicants may obtain a single FRN for the consortium as a whole, if desired (*i.e.* instead of requiring each participating HCP to obtain a separate FRN).

*B. Competitive Bidding*

175. Discussion. Competitive bidding remains a fundamental pillar supporting our goals for the Healthcare Connect Fund, as it will allow HCPs to obtain lower rates (thereby increasing access to broadband) and increase program efficiency. The outlines of the competitive bidding process for the new program will remain the same as our existing programs: All HCPs will submit a request for services for posting by USAC, wait at least 28 days before selecting a service provider, and select the most cost-effective bid. In addition, in some circumstances, applicants will be required to prepare a formal request for proposals as well.

176. While competitive bidding is essential to the program, we acknowledge that it is not without administrative costs to participants and to the Fund. We conclude that in three situations, exempting funding requests from competitive bidding in the Healthcare Connect Fund will strike a common-sense balance between efficient use of program funds and reducing regulatory costs. First, based on our experience with the Telecommunications and Internet Access Programs, we find that it will be more administratively efficient to exempt applicants seeking support for relatively small amounts. The threshold for this exemption is $10,000 or less in total annual undiscounted costs (which, with a 35 percent applicant contribution, results in a maximum of $6,500 annually in Fund support). Second, if an applicant is purchasing services from a master service agreement negotiated by a governmental entity on its behalf, and the master service agreement was awarded pursuant to applicable federal, state, Tribal, or local competitive bidding processes, the applicant is not required to re-undergo competitive bidding. Third, we conclude that applicants who wish to request support under the Healthcare Connect Fund while utilizing contracts previously endorsed by USAC (Master Services Agreements under the Pilot Program or the Healthcare Connect Fund, or evergreen contracts in any of the health care programs, or master contracts the E-rate program) may do so without undergoing additional competitive bidding, as long as they do not request duplicative support for the same service and otherwise comply with all program requirements. In addition, consistent with current RHC program policies, applicants who receive evergreen status or multi-year commitments under the Healthcare Connect Fund are exempt from competitive bidding for the duration of the contract. Applicants who are exempt from competitive bidding can proceed directly to submitting a funding commitment request.

1. ''Fair and Open'' Competitive Bidding Process

177. Discussion. Unless they qualify for one of the competitive bidding exemptions, all entities participating in the Healthcare Connect Fund must conduct a fair and open competitive bidding process prior to submitting a request for funding Form 462. Although it is not possible to anticipate all possible factual circumstances that may arise during the process, we set forth here three basic principles and some specific guidance that should help applicants comply with this requirement.

178. First, service providers who intend to bid should not also simultaneously help the HCP choose a winning bidder. More specifically, service providers who submit bids are prohibited from (1) preparing, signing or submitting an applicant's Form 461 documents; (2) serving as Consortium Leaders or other points of contact on behalf of applicants; (3) being involved in setting bid evaluation criteria; or (4) participating in the bid evaluation or vendor selection process (except in their role as potential vendors). Consultants, other third-party experts, or applicant employees who have an ownership interest, sales commission arrangement, or other financial stake with respect to a bidding service provider are also prohibited from performing any of the four functions on behalf of the applicant. All applicants must submit a ''Declaration of Assistance'' with their request for services (Form 461) to help the Commission and USAC identify third parties who assisted in the preparation of the applications.

179. Second, all potential bidders and service providers must have access to the same information and must be treated in the same manner. Any additions or modifications to the documents submitted to, and posted by, USAC must be made available to all potential service providers at the same time and using a uniform method. We direct USAC to facilitate this process by allowing applicants to submit any additions or modifications to USAC, for posting on the same Web page as the originally posted documents.

180. Finally, as is the case in the Telecommunications, Internet Access, and Pilot Programs, all applicants and service providers must comply with any applicable state or local competitive bidding requirements. The Commission's requirements apply in addition to, and are not intended to preempt, such requirements.

2. Requests for Proposals

181. Discussion. We will require submission of RFPs with Form 461 for (1) applicants who are required to issue an RFP under applicable state, Tribal, or local procurement rules or regulations; (2) consortium applications that seek more than $100,000 in program support in a funding year; and (3) consortium applications that seek support for infrastructure (*i.e.* HCP-owned facilities) as well as services. Applicants who seek support for long-term capital investments, such as HCP-constructed infrastructure or fiber IRUs, must also seek bids in the same RFP from vendors who propose to meet those needs via services provided over vendor-owned facilities, for a time period comparable to the life of the proposed capital investment. This is to allow USAC to determine if the option chosen is the most cost-effective. In addition, any applicant is free submit an RFP to USAC for posting, but all applicants who utilize an RFP in conjunction with their competitive bidding process must submit the RFP to USAC for posting and provide USAC with any subsequent changes to the RFP. We conclude that our requirement strikes a reasonable balance between ensuring larger consortia and the Fund benefit from the cost savings resulting from the RFP process, while limiting the administrative burden on individual HCPs and smaller consortia.

182. Applicants who have or intend to issue an RFP must submit a copy of the RFP with their request for services. We recognize that a consortium may not know the exact cost of the project until after it completes the competitive bidding process and selects a vendor. If a consortium chooses to forego an RFP, however, its support will be capped at $100,000.

183. The Commission does not specify requirements for RFPs in the current RHC program, and USAC does not approve RFPs. Therefore, applicants may prepare RFPs in any manner that complies with program rules and any applicable state, Tribal, or local procurement rules or regulations. The RFP, however, should provide sufficient information to enable an effective competitive bidding process, including describing the HCP's service needs and defining the scope of the project and network costs (if applicable). The RFP should also specify the period during which bids will be accepted. The RFP should also include the scoring criteria that will be used to evaluate bids for cost-effectiveness, in accordance with the requirements and solicit sufficient information so that the criteria can be applied effectively. A short, simple RFP may be appropriate for smaller consortia, or for consortia whose needs are less complex. We note that consortia may choose to submit single or multiple requests for services (and multiple RFPs), depending on the structure that makes most sense for the particular project.

3. USAC Posting of Request for Services

184. Discussion. Applicants subject to competitive bidding must submit new FCC Form 461 and supporting documentation to USAC. The purpose of these documents is to provide sufficient information on the requested services to enable an effective competitive bidding process to take place and to enable USAC to obtain certifications and other information necessary to prevent waste, fraud, and abuse.

185. Documents to be submitted to USAC with the ''request for services'' include the following:

• *Form 461.* Applicants should submit Form 461, the ''request for services,'' to provide information about the services for which they are seeking support. On Form 461, applicants will provide basic information regarding the HCP(s) on the application (including contact information for potential bidders), a brief description of the desired services, and certifications designed to ensure compliance with program rules and minimize waste, fraud, and abuse. An applicant must certify under penalty of perjury that (1) it is authorized to submit the request and that all statements of fact in the application are true to the best of the signatory's knowledge; (2) it has followed any applicable state or local procurement rules; (3) the supported services and/or equipment will be used solely for purposes reasonably related to the provision of health care service or instruction that the HCP is legally authorized to provide under the law of the state in which the services are provided and will not be sold, resold, or transferred in consideration for money or any other thing of value; and (4) the HCP or consortium satisfies all program requirements and will abide by all such requirements. Applicants not using an RFP should provide on Form 461 sufficient information regarding the desired services to enable an effective competitive bidding process, including, at a minimum, a summary of their service needs, the dates for service (including whether the contract is potentially for multiple years), and the dates of the bid evaluation period. Consortium Leaders should provide the required information on behalf of all participating HCPs.

• Applicants who include a particular service provider's name, brand, product or service on Form 461 or in the RFP must also use the words ''or equivalent'' in the description, in order to avoid the appearance that the applicant has pre-selected the named service provider or intends to give the service provider preference in the bidding process. In addition, an applicant may wish to describe its needs in general terms (*e.g.,* ''need to transmit data and medical images'' rather than requesting a specific service or bandwidth), because the applicant may not be aware of all potential service providers in its market. Using general terms can allow an applicant to avoid inadvertently excluding a lower-cost bid from a service provider using a newer technology.

• *Bid Evaluation Criteria.* The requirements for bid evaluation criteria are discussed.

• *Request for Proposal.* Certain applicants *must* use an RFP in the competitive bidding process, and any applicant *may* use an RFP. Applicants who use an RFP should submit it (along with any other relevant bidding information) as an attachment to Form 461.

• *Network Planning for Consortia.* Consortium applicants must submit a narrative attachment with Form 461 that includes the following information:

(1) Goals and objectives of the proposed network;

(2) Strategy for aggregating the specific needs of HCPs (including providers that serve rural areas) within a state or region;

(3) Strategy for leveraging existing technology to adopt the most efficient and cost effective means of connecting those providers;

(4) How the broadband services will be used to improve or provide health care delivery;

(5) Any previous experience in developing and managing health IT (including telemedicine) programs; and

(6) A project management plan outlining the project's leadership and management structure, and a work plan, schedule, and budget.

The network planning requirements are consistent with those in the Pilot Program. For purposes of the Healthcare Connect Fund, however, submission of this information is a minimum requirement, not a scoring metric for choosing funding recipients. We do not intend for this planning to be an undue administrative burden, and will continue to allow consortia to put forth a variety of strategies for accomplishing their goals, as the Commission did in the Pilot Program.

Consortium applicants are required to use program support. All applicants are subject to the Commission's procedures for audits and other measures to prevent waste, fraud, and abuse.

• *Form 460.* Applicants should submit Form 460 to certify to the eligibility of HCP(s) listed on the application, if they have not previously done so.

• *Letters of Agency for Consortium Applicants.* Consortium applicants should submit letters of agency demonstrating that the Consortium Leader is authorized to submit Form 461, including required certifications and any supporting materials, on behalf of each participating HCP in the consortium.

• *Declaration of Assistance.* As the Commission did in the Pilot Program, we require that all applicants identify, through a declaration of assistance, any consultants, service providers, or any other outside experts, whether paid or unpaid, who aided in the preparation of their applications. The declaration of assistance must be filed with the Form 461. Identifying these consultants and outside experts facilitates the ability of USAC, the Commission, and law enforcement officials to identify and prosecute individuals who may seek to defraud the program or engage in other illegal acts. To ensure participants

comply with the competitive bidding requirements, they must disclose all of the types of relationships.

186. Applicants may submit Form 461 starting 180 days before the beginning of the funding year. Our experience in the Pilot Program is that it can take as long as six months for more complex projects to complete bid evaluation and select a vendor. To allow sufficient time to complete this process prior to the beginning of the funding year, HCPs should submit Form 461 as soon as possible after the filing window opens. USAC may provide applicants with the opportunity to cure errors on their submissions, up to the date of posting of the Form 461 package. The responsibility to submit complete and accurate information to USAC, however, remains at all times the sole responsibility of the applicant.

4. 28-Day Posting Requirement

187. After the HCP submits Form 461, USAC will post the form and any accompanying documents (the Form 461 ''package'') on its Web site. USAC may institute reasonable procedures for processing Form 461 and the associated documents and may provide applicants with an opportunity to correct errors in the submissions. We caution applicants, however, that they remain ultimately responsible for ensuring that all forms and documents submitted comply with our rules and any other applicable state or local procurement requirements. We also remind applicants that they must certify under penalty of perjury on Form 461 that all statements of facts contained therein are true to the best of their knowledge, information, and belief, and that under federal law, persons willfully making false statements on the form can be punished by fine, forfeiture, or imprisonment. If an applicant makes any changes to its RFP post-submission, it is responsible for ensuring that USAC has a current version of the RFP for the Web site posting.

188. The *NPRM* proposed that applicants seeking infrastructure bids should be required to distribute their RFPs in a method likely to garner attention from interested vendors. In keeping with our objective of minimizing administrative costs to applicants, however, we decline to adopt a formal requirement for applicants to distribute an RFP beyond the USAC posting process. We do encourage applicants, however, to disseminate their requests for services (Form 461 package) as widely as possible, in order to maximize the quality and quantity of bids received. Such methods could include, for example, (1) posting a notice of the Form 461 package in trade journals or newspaper advertisements; (2) send the RFP to known or potential service providers; (3) posting the Form 461 package (or a link thereto) on the HCP's Web page or other Internet sites, or (4) following other customary and reasonable solicitation practices used in competitive bidding.

189. After posting of the Form 461 package, USAC will send confirmation of the posting to the applicant, including the posting date and the date on which the applicant may enter into a contract with the selected service provider (the ''Allowable Contract Selection Date,'' or ACSD). Once USAC posts the package, interested bidders should submit bids directly to the applicant. Applicants must wait at least 28 calendar days from the date on which their Form 461 packages are posted on USAC's Web site before making a commitment with a service provider, so the ACSD is the 29th calendar day after the posting. Applicants may not agree to or sign a contract with a service provider until the ACSD, but may discuss requirements, rates, and conditions with potential service providers prior to that date. Applicants who select a service provider before the ACSD will be denied funding.

190. Applicants are free to extend the time period for receiving bids beyond 28 days from the posting of Form 461 and may do so without prior approval. In addition, some applicants who propose larger, more complex projects may wish to undertake an additional ''best and final offer'' round of bidding. Allowing sufficient time and opportunity for all potential bidders to develop and submit bids can lead to more and better bids, and has the potential to enhance the quality and lower the price of services ultimately received. We encourage HCPs contemplating more complex projects (including those with an infrastructure component) to utilize a longer bidding period, as done by many Pilot projects. If an applicant has plans to utilize a period longer than 28 days, it should so indicate clearly on the Form or in accompanying documentation. An applicant that decides to extend the bidding period after USAC's posting of Form 461 should notify USAC promptly, so that USAC can update its Web site posting with notice of the extension.

5. Selection of the Most ''Cost-Effective'' Bid and Contract Negotiation

191. Once the 28-day period expires, applicants may evaluate bids, select a winning bidder and negotiate a contract. Applicants should develop appropriate evaluation criteria for selecting the ''most cost-effective'' bid according to the Commission's rules before submitting a Form 461 package to USAC. Applicants should follow those evaluation criteria in evaluating bids and selecting a service provider. All applicants subject to competitive bidding will be required to certify to USAC that the services and/or infrastructure selected are, to the best of the applicant's knowledge, the most cost-effective option available.

192. Applicants must submit documentation to USAC to support their certification that they have selected the most cost-effective vendor, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and any other related documents, such as bid evaluation sheets; a list of people who evaluated bids (along with their title/role/relationship to the applicant organization); memos, board minutes, or similar documents related to the vendor selection/award; copies of notices to winners; and any correspondence with service providers during the bidding/evaluation/award phase of the process. We explain how applicants may seek confidential treatment for these documents. We do not require bid evaluation documents to be in a certain format, but the level of documentation should be appropriate for the scale and scope of the services for which support is requested. Thus, for example, we expect that the documentation for a large network project will be more extensive than for an individual HCP seeking support for a single circuit. Applicants should also retain the supporting documentation for five years from the end of the relevant funding year, pursuant to the recordkeeping requirements.

193. Certain tariffed or month-to-month services are typically not provided pursuant to a signed, written contract. For all other services, the contract should be negotiated and signed before applicants submit a request for a funding commitment. Applicants who wish to enter into a multi-year contract and be exempt from competitive bidding for the duration of the contract (''evergreen status'') should ensure that the contract identifies both parties; is signed and dated by the HCP or Consortium Leader after the Allowable Contract Selection Date; and specifies the type, term, and cost of service(s). Applicants will be required to submit a copy of the final contract(s) with their funding requests.

6. Competitive Bidding Exemptions

194. An applicant that qualifies for any of the exemptions (and does not wish to use the competitive bidding process) is not required to prepare and post a Form 461. Instead, the applicant may proceed directly to filing the request for funding commitment (Form 462). If the applicant has not previously submitted Form 460 to certify to its eligibility, it should submit that form at the same time, or prior to, submitting Form 462. The exemptions only apply to participants receiving support through the Healthcare Connect Fund, not the existing RHC or Pilot Programs.

a. Annual Undiscounted Cost of $10,000 or Less

195. Discussion. Based on our experience with the Telecommunications and Pilot programs, we adopt an exemption to the competitive bidding requirements under the Healthcare Connect Fund for an applicant and any related applicants that seek support for $10,000 or less of total undiscounted eligible expenses for a single year (*i.e.,* with a required HCP contribution of 35 percent, up to $6,500 in Fund support). This exemption does not apply to multi-year contracts. This approach recognizes that for applicants pursuing small dollar value contracts, the administrative costs associated with the competitive bidding process may likely outweigh the potential benefits. Even with the exemption, however, we encourage smaller applicants to consider using the competitive bidding process to help ensure they are receiving the best service and pricing available.

196. The $10,000 annual limit is based on the average undiscounted recurring monthly cost of a 1.5 to 3.0 Mbps connection as observed under both the Telecommunications and Pilot programs. Based on this limit, small applicants, typically single HCP sites, should be able to secure support for a T–1 line or similar service without having to go through the competitive bidding process. A consortium application seeking support for undiscounted costs of $10,000 or less is also exempt from competitive bidding if the total of all consortium members' undiscounted costs for which support is sought, in this and any other application combined, is not more than $10,000 for that year. We recognize that as a practical matter, this will likely prevent all but the smallest consortia from qualifying for the exemption, but as observed under the Pilot Program, consortia can substantially benefit from the competitive bidding process in terms of better pricing and higher quality of service.

197. We recognize that an applicant may not always be able to exactly predict its annual eligible expenses in advance. If the applicant chooses to forego competitive bidding, however, its annual support will be capped at $6,500 (65 percent of $10,000) for any services that are not subject to an exemption. If a qualifying applicant later discovers that it requires additional services beyond the $10,000 limit, the applicant may receive support for the additional services if it first completes the competitive bidding process for the additional services.

b. Government Master Service Agreements

198. Discussion. We adopt a competitive bidding exemption for HCPs who are purchasing services and/or equipment from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such HCPs and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements. This exemption helps streamline the application process by removing unnecessary and duplicative government competitive bidding requirements while still ensuring fiscal responsibility. Because these MSAs have government requirements for competitive bidding, this fairly ''removes the burden from the Rural Health Care Provider to conduct an additional competitive bid.'' This exemption only applies to MSAs negotiated by, or under the direction of, *government* entities and subject to government competitive bidding requirements. Applicants must submit documentation demonstrating that they qualify for the exemption, including a copy of the MSA and documentation that it was subject to government competitive bidding requirements. In many cases these government contracts were negotiated on behalf of a large number of users, so are likely to generate similar cost efficiencies as those derived through the Healthcare Connect Fund competitive bidding process.

199. Commenters generally support the adoption of a competitive bidding exemption that allows applicants to take services from a government MSA, so long as the original master contract was subject to a competitive bidding process. For instance, CCHCS ''recommends that the Commission exempt from competitive bidding requirements State HCPs that are required to use the State mandated Master Services Agreements for the procurement of telecommunication and/or broadband services.'' Similarly, VAST argues that the ''Commission should allow eligible Health Care Providers to take services from a federal or state Master Service Agreement (MSA) that has been awarded through a competitive bidding process.''

c. Master Service Agreements Approved Under the Pilot Program or the Healthcare Connect Fund

200. Discussion. We adopt a competitive bidding exemption for HCPs purchasing services or equipment from an MSA, whether the contract was originally secured through the competitive bidding process under the Pilot Program or in the future through the Healthcare Connect Fund. As the Commission stated in the July 2012 *Bridge Funding Order,* 77 FR 42185, July 18, 2012, sufficient safeguards are in place to protect against waste, fraud, and abuse in these situations because HCPs have already gone through the competitive bidding process to identify and select the most cost-effective service provider in instituting these contracts. This exemption also applies to MSAs that have been secured through competitive bidding with funding approved by USAC during the Pilot Program bridge period. In addition, the exemption will apply to services or equipment purchased during an MSA extension approved by USAC. The exemption is limited to those MSAs that were developed and negotiated from an RFP that specifically sought a mechanism for adding additional sites to the network. This exemption does not extend to MSAs or extensions thereof that are not approved by USAC.

d. Evergreen Contracts

201. Discussion. As proposed in the *NPRM,* and as supported in the record, we allow contracts to be designated as ''evergreen'' in the Healthcare Connect Fund. As stated in the *NPRM* and echoed by commenters, evergreen procedures likely will benefit participating HCPs by affording them: (1) lower prices due to longer contract terms; and (2) reduced administrative burdens due to fewer required Form 465s.

202. A contract entered into by an HCP or consortium as a result of competitive bidding will be designated as evergreen if it meets all of the following requirements: (1) Signed by the individual HCP or consortium lead entity; (2) specifies the service type, bandwidth and quantity; (3) specifies the term of the contract; (4) specifies the cost of services to be provided; and (5) includes the physical addresses or other

identifying information of the HCPs purchasing from the contract. Consortia will be permitted to add new HCPs if the possibility of expanding the network was contemplated in the competitive bidding process, and the contract explicitly provides for such a possibility. Similarly, service upgrades will be permitted as part of an evergreen contract if the contemplated upgrades are proposed during the competitive bidding process, and the contract explicitly provides for the possibility of service upgrades.

203. Participants may also exercise voluntary options to extend an evergreen contract without undergoing additional competitive bidding, subject to certain limitations. First, the voluntary extension(s) must be memorialized in the evergreen contract. Second, the decision to extend the contract must occur before the participant files its funding request for the funding year when the contract would otherwise expire. Third, voluntary extension(s) may not exceed five years, after which the service(s) must be re-bid. We find that this limitation strikes an appropriate balance between two competing considerations: (1) providing HCPs with the price and administrative savings of entering into a long-term contract; and (2) ensuring that HCPs periodically re-evaluate whether they can obtain better prices through re-bidding a service.

204. We also conclude that, if an HCP has a contract that was designated as evergreen under Telecommunications Program or Internet Access Program procedures prior to January 1, 2014, it may choose to seek support for services provided under the evergreen contract from the Healthcare Connect Fund instead without undergoing additional competitive bidding, so long as the services are eligible for support under the Healthcare Connect Fund, and the HCP complies with all other Healthcare Connect Fund rules and procedures. The Commission noted in the *NPRM* that codifying the evergreen policy ''would maintain consistency while transitioning from the existing internet access program to the new health broadband services program.'' Allowing HCPs who have already competitively bid (and received evergreen status for) multi-year contracts seamlessly to transition into the Healthcare Connect Fund furthers our program goals to streamline the application process and promote fiscal responsibility and cost-effectiveness. Pilot Program participants who have negotiated a long-term contract that extends beyond the period of their Pilot awards may also seek to have their contracts designated as ''evergreen'' by USAC for purposes of the Healthcare Connect Fund without undergoing a new competitive bidding process, as long as the existing contract meets the requirements for an evergreen contract. If an evergreen contract approved under the Telecommunications Program, Internet Access Program, or a Pilot Program contract designated as evergreen under the Healthcare Connect Fund includes voluntary extensions, HCPs utilizing such contracts in the Healthcare Connect Fund may also exercise such voluntary extensions consistent with the requirements.

e. Contracts Negotiated Under E-Rate

205. Discussion. Consistent with § 54.501(c)(1) of our rules, we conclude that an HCP entering into a consortium with E-rate participants and becoming a party to the consortium's existing contract should be exempt from the RHC competitive bidding requirements, so long as the contract was competitively bid consistent with E-rate rules, approved for use in the E-rate program as a master contract, and the Healthcare Connect Fund applicant (*i.e.* the individual HCP or consortium) otherwise complies with all Healthcare Connect Fund rules and procedures. An applicant utilizing this exemption must submit documentation with its request for funding that demonstrates that (1) the applicant is eligible to take services under the consortium contract; and (2) the consortium contract was approved as a master contract in the E-rate program. We agree with MiCTA that such an exemption will reduce HCPs' individual administrative burdens and encourage consortia, and likely will save universal service funds due to the lower contract prices often associated with consortia bulk-buying. We thus find that a competitive bidding exemption for HCPs entering into contracts negotiated under the E-rate program will further our program goals to streamline the application process, facilitate consortium applications, and promote fiscal responsibility and cost-effectiveness. We note that an HCP in a consortium with E-rate participants may receive support only for services eligible for support under the RHC programs.

f. No Exemption for Internet2 and National LambdaRail

206. Discussion. We require participants to seek competitive bids from any research and education networks, including Internet2 and National LambdaRail, through our standard competitive bidding process. There may be instances where a more cost-effective solution is available from a commercial provider, or even a non-profit provider other than Internet2 or National LambdaRail, and a competitive bidding requirement will ensure that HCPs consider options from all interested service providers. Many commenters opposed the Commission's proposal to exempt National LambdaRail and Internet2 from competitive bidding, arguing, among other things, that such an exemption would be anti-competitive by disadvantaging other telecommunications providers. We find that requiring HCPs to seek bids from National LambdaRail and Internet2 through the normal competitive bidding process could result in lower-priced bids, and should therefore be required. This approach furthers our program goal to promote fiscal responsibility and cost-effectiveness.

*C. Funding Commitment From USAC*

207. Once a service provider is selected, applicants in the current RHC program submit a ''Funding Request'' (and supporting documentation) to provide information about the services selected and certify that the services were the most cost-effective offers received. If USAC approves the ''Request for Funding,'' it will issue a ''Funding Commitment Letter.'' USAC's role is to review the funding request for accuracy and completeness. Once an applicant receives a funding commitment, it may invoice USAC after receiving a bill from the service provider. Applicants do not need to file a Form 467 to notify USAC that the service provider began providing services for which the applicant is seeking support.

1. Requirements for Service Providers

208. All vendors that participate in the Healthcare Connect Fund are required to have a Service Provider Identification Number (SPIN). The SPIN is a unique number assigned to each service provider by USAC, and serves as USAC's tool to ensure that support is directed to the correct service provider. SPINs must be assigned before USAC can authorize support payments. Therefore, all service providers submitting bids to provide services to selected participants will need to complete and submit a Form 498 to USAC for review and approval if selected by a participant before funding commitments can be made.

209. Service providers in the Healthcare Connect Fund must certify on Form 498, as a condition of receiving support, that they will provide to HCPs, on a timely basis, all information and documents regarding the supported

service(s) that are necessary for the HCP to submit required forms or respond to FCC or USAC inquiries. In addition, USAC may withhold disbursements for the service provider if the service provider, after written notice from USAC, fails to comply with this requirement.

2. Filing Timeline for Applicants

210. Discussion. Unless and until the Commission adopts other procedures to prioritize requests for funding, we retain the rule that requests for funding may be submitted at any point during the funding year, and direct USAC to process and prioritize funding requests on a rolling basis (according to the date of receipt) until it reaches the program cap established by the Commission. Given the historical utilization of RHC support and the implementation timetable for funding year 2013, we do not currently anticipate that demand will exceed the $400 million cap in FY 2013 or for the foreseeable future. We conclude, however, that this longstanding default rule will apply in the unlikely event that the cap is exceeded, unless and until the Commission adopts a different rule for prioritizing funding requests. We also direct USAC to periodically inform the public, through its Web site, of the total dollar amounts (1) requested by HCPs and (2) actually committed by USAC for the funding year, as well as the amounts committed in upfront payments (for purposes of the $150 million cap on upfront payments).

211. We also direct USAC to establish a filing window for funding year 2013 and for future funding years as necessary, for both the Telecommunications Program and the Healthcare Connect Fund. When USAC establishes a filing window, it should provide notice of the window in advance via public notice each year. The filing window may begin prior to the first day of the funding year, as long as actual support is only provided for services provided during the funding year.

212. As in the Telecommunications Program, applicants may initiate services at their own risk during the funding year pending the processing of their funding requests, as long as the services are provided pursuant to a contract or other service agreement that complies with program requirements (including the competitive bidding process). The contract must be signed (or the service agreement entered into) before the applicant submits a funding request.

213. Funding will be available for Pilot participants starting July 1, 2013, and starting January 1, 2014, for other applicants.

3. Required Documentation for Applicants

214. This information should be submitted to USAC to support a request for commitment of funds.

215. Form 462. Form 462 is the means by which an applicant identifies the service(s), rates, service provider(s), and date(s) of service provider (vendor) selection. In the Primary Program, applicants are required to submit a separate form for each service or circuit for which the applicant is seeking support. In the Healthcare Connect Fund, we will not require separate forms for each service or circuit, thereby lessening administrative burden on potential Fund recipients. Each individual applicant will submit a single form for each service provider that lists the relevant information for all service(s) or circuit(s) for which the individual applicant is seeking support at the time. Similarly, each consortium applicant will submit a single form for each service provider that lists the relevant information for all consortium members, including the service(s) or circuit(s) for which each member is seeking support at the time.

216. Certifications. Applicants must provide the following certifications on Form 462.

- The person signing the application is authorized to submit the application on behalf of the applicant, and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained therein are true.
- Each service provider selected is, to the best of the applicant's knowledge, information, and belief, the most cost-effective service provider available, as defined in the Commission's rules.
- All Healthcare Connect Fund support will be used only for the eligible health care purposes, as described in this *Order* and consistent with the Act and the Commission's rules.
- The applicant is not requesting support for the same service from both the Telecommunications Program and the Healthcare Connect Fund.
- The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules, and understands that any letter from USAC that erroneously commits funds for the benefit of the applicant may be subject to rescission.
- The applicant has reviewed all applicable requirements for the program and will comply with those requirements.
- The applicant will maintain complete billing records for the service for five years.

217. Contracts or other documentation. All applicants must submit a contract or other documentation that clearly identifies (1) the vendor(s) selected and the HCP(s) who will receive the services; (2) the service, bandwidth, and costs for which support is being requested; (3) the term of the service agreement(s) if applicable (*i.e.* if services are not being provided on a month-to-month basis). For services provided under contract, the applicant must submit a copy of a contract signed and dated (after the Allowable Contract Selection Date) by the individual HCP or Consortium Leader. If the service is not being provided under contract, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information. In either case, applicants must ensure that the documentation provided specifies all charges for which the applicant is receiving support (for example, if the contract does not specify all such charges, applicants should submit a bill or other similar documentation to support their request). In addition, applicants may wish to submit a network or circuit diagram for requests involving multiple vendors or circuits.

218. Competitive bidding documents. Applicants must submit documentation to support their certifications that they have selected the most cost-effective option. Relevant documentation includes a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and any other related documents. Applicants who are exempt from competitive bidding should also submit any relevant documentation to allow USAC to verify that the applicant is eligible for the exemption (*e.g.,* a copy of the relevant government MSA and documentation showing that the applicant is eligible to purchase from the MSA, or USAC correspondence identifying and approving a contract previously approved for the Pilot Program).

219. Cost allocation for ineligible entities or components. Applicants who seek to include ineligible entities within a consortium, or to obtain support for services or equipment that include both eligible and ineligible components, should submit a description of their cost allocation methodology per the requirements. Applicants should also submit any agreements that memorialize cost-sharing arrangements with ineligible entities.

220. Evidence of viable source for 35 percent contribution. Many projects in

the Pilot Program experienced implementation delays, in part due to the difficulty in obtaining their required contribution. In the *NPRM,* the Commission suggested participants in the proposed infrastructure program be required to demonstrate they have a reasonable and viable source for their contribution by submitting letters of assurances confirming funds from eligible sources to meet the contribution requirement.

221. We require all consortium applicants to submit, with their funding requests, evidence of a viable source for their 35 percent contribution. We adopt this requirement to minimize administrative processing of applications that do not have a source for the required match, which will lessen USAC's administrative costs and thereby lessen the burden on the Fund. Applicants, especially those that intend to undertake high-dollar projects, should begin identifying potential sources for their contribution as early as possible. The funding request is the last major step in the application process before applicants receive a funding commitment, and at this stage applicants should be well advanced in determining the amount of their contribution and the source for that contribution. We also note that program participants will be required to submit a certification that they have paid their 35 percent contribution before USAC will disburse universal service support, so it is important for participants to have a ready source of payment before they begin receiving services.

222. Consortia may provide evidence of a viable source by submitting a letter signed by an officer, director, or other authorized employee of the Consortium Leader. The letter should identify the entity that will provide the 35 percent contribution, and the type of eligible source (*e.g.* HCP budget, grant/loan, etc.). If the applicant contribution is dependent on appropriations, grant funding, or other special conditions, the applicant should include a description of any special conditions and general information regarding those conditions. If the applicant has already identified secondary sources of funding, it should also include information regarding such sources in its letter. If the source for the participant contribution is excess capacity, applicants must identify the entit(ies) who will pay for the excess capacity, and submit evidence of arrangements made to comply with the requirements.

223. Consortium applicants are not required to identify the funding source for each consortium member if each consortium member will pay its contribution individually. Instead, the Consortium Leader should (1) verify that each member will pay its contribution from an eligible source (*e.g.,* by requesting a certification to that effect in the consortium member's LOA) and (2) submit documentation (*e.g.* consortium membership agreement) that shows that each member has agreed to pay its own contribution from an eligible source.

224. We delegate authority to the Bureau to provide more specific guidance, if needed, on the content of the letter and documentation to be submitted. USAC may, as needed, request additional documentation from applicants in order to ensure compliance with this requirement.

225. Additional documentation for consortium applicants. Consortium applicants should submit any revisions to the project management plan, work plan, schedule, and budget previously submitted with the Request for Services (Form 461). If not previously provided with the project management plan, applicants should also provide (or update) a narrative description of how the network will be managed, including all administrative aspects of the network (including but not limited to invoicing, contractual matters, and network operations.) If the consortium is required to provide a sustainability plan, the revised budget should include the budgetary factors discussed in the sustainability plan requirements. Finally, consortium applicants will be required to provide electronically (via a spreadsheet or similar method) a list of the participating HCPs and all of their relevant information, including eligible (and ineligible, if applicable) cost information for each participating HCP. USAC may reject submissions that lack sufficient specificity to determine that costs are eligible.

226. Sustainability plans for applicants requesting support for long-term capital expenses. In the *NPRM,* the Commission proposed to require sustainability plans similar to those required in the Pilot Program for HCPs who intended to have an ownership interest, indefeasible right of use, or capital lease interest in facilities funded by the Fund. We adopt the proposal in the *NPRM,* and require that consortia who seek funding to construct and own their own facilities or obtain IRUs or capital lease interests to submit a sustainability plan with their funding requests demonstrating how they intend to maintain and operate the facilities that are supported over the relevant time period. A sustainability plan for such projects is appropriate to protect the Fund's investment, because such projects are requesting support for capital expenses that are intended to have long-term benefits.

227. We largely adopt the same specific requirements for sustainability plans proposed in the *NPRM* and utilized in the Pilot Program. Although participants are free to include additional information to demonstrate a project's sustainability, the sustainability plan must, at a minimum, address the following points:

- *Projected sustainability period.* Indicate a reasonable sustainability period that is at least equal to the useful life of the funded facility. Although a sustainability period of 10 years is generally appropriate, the period of sustainability should be commensurate with the investments made from the health infrastructure program. For example, if the applicant is purchasing a 20 year IRU, the sustainability period should be a minimum of 20 years. The applicant's budget should show projected income and expenses (*i.e.* for maintenance) for the project at the aggregate level, for the sustainability period.
- *Principal factors.* Discuss each of the principal factors that were considered by the participant to demonstrate sustainability. This discussion should include all factors that show that the proposed network will be sustainable for the entire sustainability period. Any factor that will have a monetary impact on the network should be reflected in the applicant's budget.
- *Terms of membership in the network.* Describe generally any agreements made (or to be entered into) by network members (*e.g.,* participation agreements, memoranda of understanding, usage agreements, or other documents). If the consortium will not have agreements with the network members, it should so indicate in the sustainability plan. The sustainability plan should also describe, as applicable: (1) Financial and time commitments made by proposed members of the network; (2) if the project includes excess bandwidth for growth of the network, describe how such excess bandwidth will be financed; and (3) if the network will include eligible HCPs and other network members, describe how fees for joining and using the network will be assessed.
- *Ownership structure.* Explain who will own each material element of the network (*e.g.,* fiber constructed, network equipment, end user equipment). For purposes of responding to this question, ''ownership'' includes an IRU interest. Applicants should clearly identify the legal entity who will own each material

element so that USAC can verify that only eligible entities receive the benefits of program support. Applicants should also describe any arrangements made to ensure continued use of such elements by the network members for the duration of the sustainability period.

- *Sources of future support.* If sustainability is dependent on fees to be paid by eligible HCPs, then the sustainability plan should confirm that the HCPs are committed and have the ability to pay such fees. If sustainability is dependent on fees to be paid by network members that will use the network for health care purposes, but are not eligible HCPs under the Commission's rules, then the sustainability plan should identify such entities. Alternatively, if sustainability is dependent on revenues from excess capacity not related to health care purposes, then the sustainability plan should identify the proposed users of such excess capacity. Projects who have multiple sources of funding should address each source of funding and the likelihood of receiving that funding. Eligible HCPs may not receive support twice for the same service. For example, if the Healthcare Connect Fund provides support for a network to procure an IRU to be used by its members, and the network charges its members a fee to cover the undiscounted cost of the IRU, the members may not then individually apply for program support to further discount the membership fee.
- *Management.* The applicant's management plan should describe the management structure of the network for the duration of the sustainability period, and the applicant's budget should describe how management costs will be funded.

228. The Pilot Program required projects to submit a copy of their sustainability plan with every quarterly report. Based on our experience with the Pilot Program, we conclude submission of the sustainability report on a quarterly basis is unnecessarily burdensome for applicants, and provides little useful information to the Administrator. We therefore conclude that sustainability reports for the Healthcare Connect Fund should only be required to be re-filed if there is a material change in sources of future support or management, a change that would impact projected income or expenses by the greater of 20 percent or $100,000 from the previous submission, or if the applicant submits a funding request based on a new Form 461 (*i.e.,* a new competitively bid contract). In that event, the revised sustainability report should be provided to USAC no later than the end of the relevant quarter, clearly showing (*i.e.,* by redlining or highlighting) what has changed.

4. Requests for Multi-Year Commitments

229. In the *July 19 Public Notice,* 77 FR 43773, July 26, 2012, the Bureau sought to further develop the record on issues relating to multi-year contracts, including issues relating to upfront payments. Commenters unanimously supported multi-year commitments as a measure that would reduce administrative costs and increase the value of the services procured.

230. Discussion. We will allow applicants in the Healthcare Connect Fund to receive multi-year funding commitments that cover a period of up to three funding years. The multi-year funding commitments we adopt will reduce uncertainty and administrative burden by eliminating the need for HCPs to apply every year for funding, as is required under the Primary Program, and reduce administrative expenses both for the projects and for USAC. Multi-year funding commitments, prepaid leases, and IRUs also encourage term discounts and produce lower rates from vendors. Multi-year commitments will also allow consortium applicants to choose HCP-constructed-and-owned infrastructure where it is the most cost-effective way to obtain broadband. Applicants receiving support for long-term capital investments whose useful life extends beyond the period of the funding commitment may be subject to additional reporting requirements to ensure that such facilities continue to be used for their intended purpose throughout their useful life. We delegate authority to the Bureau to issue administrative guidance to implement such requirements.

231. Applicants requesting a funding commitment for a multi-year funding period should indicate the years for which funding is required on Form 462 and, for consortia, with the attachment that lists the HCPs and costs for each HCP within the network. If a long-term contract covers a period of more than three years, the applicant may also have the contract designated as ''evergreen'' if the contract meets the criteria specified, which will allow the applicant to re-apply for a funding commitment under the contract after three years without having to undergo additional competitive bidding. In choosing a three-year period, we strike a balance between allowing applicants and the Fund to reap the benefits of long-term contracts, reducing administrative burdens on applicants and the Fund, and ensuring that applicants are not ''locked in'' to long-term contracts which may prevent them from seeking more cost-effective options when prices drop, or they choose to upgrade to higher bandwidths/newer technologies. Three years is also consistent with our requirement that upfront payments averaging more than $50,000/site be amortized over at least three years. Commenters generally support a three-year period as being reasonable. Consistent with current rules, a multi-year funding commitment cannot extend beyond the end of the contract submitted with the request for funding. For example, if an applicant submits a two-year contract and requests a multi-year funding commitment, USAC will only issue a funding commitment for two years. Similarly, if a contract ends in the middle of the funding year, the funding commitment can only extend to the end date of the contract.

232. In the *NPRM,* the Commission proposed a $100 million cap for infrastructure projects. We institute a single cap of $150 million annually that will apply to all commitments for upfront payments during the funding year, and all multi-year commitments made during a funding year. This approach for the hybrid infrastructure-services program will provide greater flexibility than the $100 million cap proposed in the *NPRM* for infrastructure projects; it recognizes that upfront payments also can be substantial when purchasing services from a commercial provider who needs to deploy facilities to serve the HCP. This cap takes into account the need for economic reasonableness and responsible fiscal management of the program, and will help prevent large annual fluctuations in program demand. We direct USAC to process and prioritize funding requests for upfront payments and multi-year commitments on a rolling basis, similar to the process for funding requests generally. We also direct USAC to periodically inform the public, through its Web site, of the total dollar amounts subject to the $150 million cap that have been (1) requested by HCPs (2) actually committed by USAC for the funding year. We may consider adjusting the cap upward if it appears a significant number of Primary Program participants are moving to the Healthcare Connect Fund. Finally, USAC may establish a filing window tailored toward funding requests subject to the $150 million cap, if necessary.

233. Current Commission rules allow universal service support for state and federal taxes and surcharges assessed on eligible services. We recognize that taxes and surcharges can fluctuate over a three-year commitment period. In the

Pilot Program, projects were allowed to estimate taxes and surcharges over the commitment period. Similarly, in the Healthcare Connect Fund, we will take into account the year-to-year fluctuation in taxes and surcharges by allowing HCPs and consortia to estimate the expense using either current tax rates or by projecting the tax rate for the commitment period. Projected taxes and surcharges shall be limited to no higher than 110 percent of the current rate at the time that the HCP or consortium files a funding request. The funding commitment will be issued based on the tax and surcharge rate provided by the applicant. We note that this does not lead to an additional potential for waste, fraud, and abuse, because disbursements will be based on actual expenses, not the projections.

5. USAC Processing and Issuance of Funding Commitment Letters

234. USAC will review funding requests and, if approved, issue a funding commitment letter to the applicant. We allow applicants the opportunity to cure errors on their submissions after initial USAC review, although the responsibility to submit complete and accurate information remains at all times the sole responsibility of the applicant. In order to expedite HCPs' ability to initiate service once they have selected a service provider, we specify a timeframe for USAC's initial review of funding commitment requests. Within 21 calendar days of receipt of a complete funding commitment request, USAC will inform applicants in writing of (1) any and all ministerial or clerical errors that it identifies in the funding commitment request, along with a clear and specific explanation of how the selected participants can remedy those errors; (2) any missing, incomplete, or deficient certifications; and (3) any other deficiencies that USAC finds, including any ineligible network components or ineligible network components that are mislabeled in the funding request. If USAC needs more than 21 calendar days to complete its initial review of the funding request, it should inform the applicant in writing that it needs additional time, and provide the applicant with a date on or before which it expects to provide the information. We remind applicants that this 21-day period is not a deadline for USAC to issue a funding commitment letter. Instead, it is a timeframe for USAC to check that information provided by applicants is complete and accurate, which will then allow USAC to subsequently process the funding request. If an applicant receives a notice that its funding request includes deficiencies, it will have 14 calendar days from the date of receipt of the USAC written notice to amend or re-file its funding request for the sole purpose of correcting the errors identified by USAC.

235. For purposes of prioritizing funding requests, funding requests are deemed to have been filed when the applicant submits an application that is complete. If USAC identifies any errors or deficiencies during its initial 21-day review, the application is not considered to be complete until all such errors and deficiencies are corrected. Applicants may make material changes to their funding requests prior to USAC's issuance of a funding commitment letter, but will be considered, for priority purposes, to have filed their applications as of the date when a complete notice of the material change (*i.e.* without the types of errors or deficiencies identified in the prior paragraph) is submitted to USAC.

236. Upon completion of its review process, USAC will send funding commitment letter or a denial. The funding commitment letter should specify whether the contract has been deemed evergreen (if requested), and whether a multi-year commitment has been issued (and if so, the annual amount of the commitment). Applicants denied funding for errors other than ministerial or clerical errors must follow USAC's and the Commission's regular appeal procedures. Applicants that do not comply with the terms of this *Order,* section 254 of the 1996 Act, and Commission rules and orders will be denied funding in whole or in part, as appropriate.

*D. Invoicing and Payment Process*

237. Discussion. In Healthcare Connect Fund, we adopt an invoicing procedure similar to the one currently in use by the Pilot Program. In the Pilot Program, service providers bill HCPs directly for services that they have provided. Upon receipt of a service provider's bill, the HCP creates and approves an invoice for the services it has received, certifies that the invoice is accurate and that it has paid its contribution, and sends the invoice to the service provider. The service provider then certifies the invoice's accuracy and uses it to receive payment from USAC.

238. This invoicing procedure is different from the Primary Program in two principal ways. In the Healthcare Connect Fund, as in the Pilot Program, (1) a HCP or Consortium Leader must certify to USAC that it has paid its contribution to the service provider before the invoice can be sent to USAC and the service provider can be paid, and (2) before any invoice is sent to USAC, both the HCP and service provider must certify that they have reviewed the document and that it is accurate. We believe the adoption of these requirements in the new program will help eliminate waste, fraud, and abuse by making sure that HCPs have made their required contribution to the cost of the services they receive and that the invoice accurately reflects the services an HCP is receiving and the support due to the service provider. It is permissible to certify that these steps have been taken via electronic signature of an officer, director, or other authorized employee of the Consortium Leader or HCP. All invoices must be received by the Administrator within six months of the end date of the funding commitment.

*E. Contract Modifications*

239. Discussion. The *Universal Service Fourth Order on Reconsideration,* 63 FR 2094, January 13, 1998, concluded that requiring a competitive bid for every minor contract modification would place an undue burden upon eligible entities. The Commission found that an eligible school, library, or rural HCP would be entitled to make minor modifications to a contract that was previously approved for funding without completing an additional competitive bid process. The Commission also noted that any service provided pursuant to a minor contract modification also must be an eligible supported service as defined in the *Order* to receive support or discounts.

240. Consistent with existing requirements, HCPs should look to state or local procurement laws to determine whether a proposed contract modification would be considered minor and therefore exempt from state or local competitive bidding processes. If a proposed modification would be exempt from state or local competitive bidding requirements, the applicant likewise would not be required to undertake an additional competitive bidding process in connection with the applicant's request for discounted services under the federal universal service support mechanisms. Similarly, if a proposed modification would have to be rebid under state or local competitive bidding requirements, then the applicant also would be required to comply with the Commission's competitive bidding requirements before entering into an agreement adopting the modification.

241. The *Universal Service Fourth Order on Reconsideration* also

addressed instances in which state and local procurement laws are silent or are otherwise inapplicable with respect to whether a proposed contract modification must be rebid under state or local competitive bidding processes. In such cases, the Commission adopted the ''cardinal change'' doctrine as the standard for determining whether the contract modification requires rebidding. The cardinal change doctrine looks at whether the modified work is essentially the same as that for which the parties contracted. A cardinal change occurs when one party affects an alteration in the work so drastic that it effectively requires the contractor to perform duties materially different from those originally bargained for. In determining whether the modified work is essentially the same as that called for under the original contract, factors considered are the extent of any changes in the type of work, performance period, and cost terms as a result of the modification. Ordinarily a modification falls within the scope of the original contract if potential offerors reasonably could have anticipated the modification under the changes clause of the contract.

242. The cardinal change doctrine recognizes that a modification that exceeds the scope of the original contract harms disappointed bidders because it prevents those bidders from competing for what is essentially a new contract. The Commission adopted the cardinal change doctrine as the test for determining whether a proposed modification will require rebidding of the contract, absent direction on this question from state or local procurement rules, because it believed this standard reasonably applies to contracts for supported services arrived at via competitive bidding. If a proposed modification is not a cardinal change, there is no requirement to undertake the competitive bidding process again.

243. An eligible HCP seeking to modify a contract without undertaking a competitive bidding process should, within 30 calendar days of signing or otherwise entering into the contract modification, file a revised funding commitment request indicating the value of the proposed contract modification so that USAC can track contract performance. The HCP also must demonstrate that the modification is within the original contract's change clause or is otherwise a minor modification that is exempt from the competitive bidding process. The HCP's justification for exemption from the competitive bidding process will be subject to audit and will be reviewed by USAC to determine whether the applicant's request is, in fact, a minor contract modification that is exempt from the competitive bidding process. We note that program participants make contract modifications without competitive bidding at their own risk. If a participant makes a contract modification without competitive bidding, and the modification does not qualify as minor, USAC will not allow support for the modification.

244. We emphasize that even though minor modifications will be exempt from the competitive bidding requirement, parties are not guaranteed support with respect to such modified services. A commitment of funds pursuant to an initial FCC Form 462 does not ensure that additional funds will be available to support the modified services. We conclude that this approach is reasonable and is consistent with our effort to adopt the least burdensome application process possible while maintaining the ability of USAC and the Commission to perform appropriate oversight.

*F. Site and Service Substitutions*

245. Based on our experience in the Pilot Program, we adopt a site and service substitution policy for participants in the Healthcare Connect Fund that is similar to that applied in the Pilot Program. Consortia may make site substitutions in accordance with the policy (because individual applicants are by definition single-site, no site substitutions are allowed for individual applicants). Both individual and consortium applicants may make service substitutions in accordance with the policy.

246. As the Commission found in the Pilot Program, allowing site and service substitutions minimizes the burden on consortium participants and increases administrative efficiency by enabling HCPs to ask USAC to substitute or modify the site or service without modifying the actual commitment letter. Moreover, this policy recognizes the changing broadband needs of HCPs by providing the flexibility to substitute alternative services within the constraints. This policy is a more administratively efficient approach than the Primary Program, in which any modification of funding requires a new application and a new funding commitment letter for each HCP impacted. In its *July 19 Public Notice,* the Bureau asked for comment on whether to adopt the Pilot Program approach to site and service substitutions in the reformed program. The commenters generally supported applying the same approach in the new program.

247. The Pilot Program permits site and service substitutions within a project in certain specified circumstances, in order to provide some amount of flexibility to project participants. Under the Pilot Program, a site or service substitution may be approved if (i) the substitution is provided for in the contract, within the change clause, or constitutes a minor modification, (ii) the site is an eligible HCP and the service is an eligible service under the Pilot Program, (iii) the substitution does not violate any contract provision or state or local procurement laws, and (iv) the requested change is within the scope of the controlling FCC Form 465, including any applicable Request for Proposal. Once USAC has issued a funding commitment letter, support under the letter is capped at the amount provided in the letter. Therefore, support for a qualifying site and service substitution is only guaranteed if the substitution will not cause the total amount of support under the funding commitment letter to increase. We adopt these same criteria for the Healthcare Connect Fund, which we include in a new rule.

*G. Data Collection and Reporting Requirements*

248. Discussion. Data from participants and from the Fund Administrator are essential to the Commission's ability to evaluate whether the program is meeting the performance goals adopted and to measure progress toward meeting those goals. We anticipate collecting the necessary data through a combination of the application process and annual reporting requirements. For consortium participants under the Healthcare Connect Fund, we require the submission of annual reports. Annual, rather than quarterly, reports minimize the burden on participants and the Administrator alike while still supporting performance evaluation and enabling us to protect against waste, fraud, and abuse. Because we expect to be able to collect data from single applicants in the Healthcare Connect Fund on forms they already submit, we do not at this time expect that they will need to submit an annual report, unless a report is required for other reasons. To further minimize the burden on participants, we direct the Bureau to work with the Administrator to develop a simple and streamlined reporting system that integrates data collected through the application process, thereby eliminating the need to resubmit any information that has already been provided to the Administrator. We agree with several commenters that to the

extent feasible, USAC should collect information through automated interfaces.

249. In the Healthcare Connect Fund, each consortium lead entity must file an annual report with the Administrator on or before September 30 for the preceding funding year (*i.e.,* July 1 through and including June 30). Each consortium is required to file an annual report for each funding year in which it receives support from the Healthcare Connect Fund. For consortia that receive large upfront payments, the reporting requirement extends for the life of the supported facility. The Administrator shall make the annual reports publicly available as soon as possible after they are filed.

250. All participants are required to provide the information necessary to ensure the Commission can assess progress towards the performance goals and measures adopted. To track progress toward the first goal, increasing access to broadband, we require participants to report the characteristics, including bandwidth and price, of the connections supported by the Healthcare Connect Fund. To track progress toward the second goal, fostering broadband health care networks, we require participants to report the number and characteristics of the eligible and non-eligible sites connecting to the network. We also expect participants to report whether and to what extent the supported connections are being used for telemedicine, exchange of EHRs, participation in a health information exchange, remote training, and other telehealth applications. To track progress toward the third goal, maximizing the cost-effectiveness of the program, in addition to the reporting requirements under the first goal, we require that participants report the number and nature of all responsive bids received through the competitive bidding process as well as an explanation of how the winning bid was chosen.

251. We delegate authority to the Bureau to provide, and modify as necessary, further guidance on the reporting requirements, for both participants and the Administrator, to ensure the Commission has the necessary information to measure progress towards meeting the performance goals adopted in this *Order*. For consortium applicants, the consortium leader will be responsible for preparing and submitting these annual reports. Some of the data will already be collected through other forms that participants will submit through the funding process. We do not require non-consortium applicants to file annual reports at this time because we expect to be able to collect information through forms they already submit in connection with the application process, or if necessary, through other simplified automated interfaces. We delegate authority to the Bureau to work with USAC to accomplish these tasks, and to modify specific reporting requirements if necessary consistent with the requirements.

252. We also extend the current Pilot Program reporting requirement for each Pilot project through and including the last funding year in which the project receives Pilot support, but make it an annual instead of a quarterly obligation. We will also make the Pilot Program reporting requirements the same as the Healthcare Connect Fund reporting requirements and delegate to the Bureau the authority to specify whether any additional information from the quarterly report should continue to be included in the annual report that might be needed to evaluate the Pilot Program or to prevent waste, fraud, and abuse in that program. As of the effective date of this *Order,* Pilot projects are no longer required to file quarterly reports and instead may file their first annual report on September 30, 2013. We further delegate authority to the Bureau to determine the expiration of any supplemental Pilot Program reporting requirements.

253. In specifying these reporting requirements, we have sought to simplify and streamline the requirements as much as possible, in order to minimize the burden on participants while still ensuring the funding is used for its intended purpose. This furthers all of our performance goals—expanding access to broadband and fostering health care networks while maximizing the cost-effectiveness of the program. The data we collect will also help us to measure progress toward each of these goals.

## VI. Additional Measures To Prevent Waste, Fraud, and Abuse

254. We adopt additional safeguards against waste, fraud, and abuse. These are discussed set forth in new rule § 54.648, in various rule provisions requiring certifications, and elsewhere in the rules and in this *Order.* The safeguards are patterned on the rules for the Telecommunications Program, and incorporate many of the provisions that proved effective in the Pilot Program in making the program efficient and in safeguarding against waste, fraud, and abuse. The provisions we adopt here also take into account the comments we received in response to the *NPRM.* These safeguards are in addition to many of the requirements for the Healthcare Connect Fund that are also designed to protect against waste, fraud, and abuse.

255. In addition to the requirements, we remind participants in the Healthcare Connect Fund that they will be subject to existing Commission rules governing the exclusion of certain persons from activities associated with or relating to the USF support mechanisms (the ''suspension and disbarment'' rules). We also remind participants that all entities that are delinquent in debt owed to the Commission are be prohibited from receiving support until full payment or satisfactory arrangement to pay the delinquent debt(s) is made, pursuant to the Commission's ''red light'' rule implementing the Debt Collection Improvement of 1996.

### *A. Recordkeeping, Audits, and Certifications*

256. As proposed in the *NPRM,* we apply all relevant Pilot and Telecommunications program requirements regarding recordkeeping, audits, and certifications to participants in the Healthcare Connect Fund, as modified herein, and we recodify those requirements in a new rule section applicable to the new program.

257. Recordkeeping. Consistent with §§ 54.619(a), (b), and (d) of our current rules, program participants and vendors in the Healthcare Connect Fund must maintain for five years certain documentation related to the purchase and delivery of services, network equipment, and participant-owned facilities funded by the program, and they will be required to produce these records upon request. In particular, participants who receive support for long-term capital investments in facilities whose useful life extends beyond the period of the funding commitment shall maintain records for at least 5 years after the end of the useful life of the facility. The *NPRM* also proposed to: (1) Clarify that the documents to be retained by participants and vendors must include all records related to the participant's application for, receipt of, and delivery of discounted services; and (2) mandate that vendors, upon request, produce the records kept pursuant to the Commission's recordkeeping requirement. We adopt rules consistent with these proposals to enable the Commission and USAC to obtain the records necessary for effective oversight of the new Healthcare Connect Fund.

258. Audits and Site Visits. The Commission will continue to use the

audit process to ensure there is a focused and effective system for identifying and deterring program abuse. Consistent with existing § 54.619(c) of the Commission's rules, participants in the Healthcare Connect Fund will be subject to random audits to ensure compliance with program rules and orders.

259. USAC must assess compliance with the program's requirements, including the new requirements established in this *Order* for recipients of RHC support. We direct USAC to review and revise the Beneficiary/Contributor Compliance Audit Program (BCAP) and the Payment Quality Assurance (PQA) program to take into account the changes adopted in this *Order* when designing procedures for recipients of funding under the Healthcare Connect Fund. We further direct USAC to submit a report to the Bureau and Office of Managing Director (OMD), within 60 days of the effective date of this *Order* or by May 31, 2013, whichever is later, proposing changes to the BCAP and PQA programs consistent with this *Order.*

260. We also direct USAC to conduct random site visits to Healthcare Connect Fund participants to ensure that support is being used for its intended purposes, or as necessary and appropriate based on USAC's review of participants' submissions to USAC. We further direct USAC to notify the Wireline Competition Bureau and the Office of the Managing Director of any site visit findings and analysis within 45 days of the site visit.

261. Certifications. We adopt certification requirements for the Healthcare Connect Fund that are similar to those in the existing RHC programs. Participants in the Healthcare Connect Fund must certify under oath to compliance with certain program requirements, including the requirements to select the most cost-effective bid and to use program support solely for purposes reasonably related to the provision of health care services or instruction.

262. For individual HCP applicants, required certifications must be provided and signed by an officer or director of the HCP, or other authorized employee of the HCP (electronic signatures are permitted). For consortium applicants, an officer, director, or other authorized employee of the Consortium Leader must sign the required certifications. USAC may not knowingly accept certifications signed by a person who is not an officer, director, or other authorized employee of the HCP or Consortium Leader.

263. Third parties may submit forms and other documentation on behalf of the applicant, including the HCP or Consortium Leader's signature and certifications, if USAC receives, prior to submission of the forms or documentation, a written, dated, and signed authorization from the relevant officer, director, or other authorized employee stating that the HCP or Consortium Leader accepts all potential liability from any errors, omissions, or misrepresentations on the forms and/or documents being submitted by the third party. Consistent with longstanding precedent, we find that a HCP or Consortium Leader may not contractually reallocate responsibility for compliance with program requirements to a consultant or similar third party.

264. We find that our actions here will preserve the integrity of the program by protecting against wasteful or unlawful use of support.

*B. Duplicative Support and Relationship to Other RHC Programs*

265. Discussion. As the Commission proposed in the *NPRM,* we adopt a rule prohibiting HCPs from receiving universal service support for the same services from both the Telecommunications Program and the Healthcare Connect Fund. This prohibition is necessary because, in certain instances, an HCP's selected service could be eligible for support under both the Telecommunications Program and the Healthcare Connect Fund. Where this is the case, HCPs will not be permitted to ''double dip'' from the USF for the same connections. Applicants are prohibited from submitting a funding request for the same service in the Telecommunications Program and the Healthcare Connect Fund. Further, consistent with the *NPRM,* we adopt a rule prohibiting HCPs from receiving funds for the same services under either the Telecommunications or the reformed RHC program and any other universal service program. If an HCP is still receiving support under the Pilot Program, it also will be subject to this same restriction on receiving support from another FCC program for the same services. Under this rule, an HCP only will be prohibited from receiving *duplicative* support for the *same* services—not from receiving *complementary* support for *different* services.

266. Our action here is consistent with the Commission's Pilot Program requirement that participants cannot receive support for the same service from both the Pilot Program and other universal service programs. We believe that the prohibition on using funds from other Universal Service programs as part of the HCP's 35 percent contribution requirement is equally important in our reformed RHC program, and that it will help safeguard against wasteful and unlawful duplicative distribution of universal service support.

267. We do not believe, however, that it is necessary in the Healthcare Connect Fund to prohibit the use of federal funds from non-universal service program sources to be part of the HCP's 35 percent contribution requirement. Here, the HCP contribution amount is significantly greater than in the Pilot Program (35 percent as opposed to 15 percent in the Pilot Program). While we are not aware of other sources of federal funding for HCPs that could be used towards their 35 percent contribution, we do not want to preclude the possibility that a recipient in our program could use funding from another federal agency towards its 35 percent contribution. We anticipate that even if other federal funding may be available, HCPs will still be required to secure a significant portion of the cost of broadband supported by this program through their own efforts.

268. We also do not preclude federal government entities, such as the Indian Health Service, or other Tribal entities, from receiving support under the Healthcare Connect Fund, even though their 35 percent contribution may come from federal sources, as does the balance of the budget of such entities. We also do not preclude HCPs from purchasing services from entities that have received federal funds to assist in infrastructure construction, such as through the Broadband Telecommunications Opportunities Program or the Rural Utilities Service Broadband Infrastructure Program. These programs are intended to develop broadband infrastructure in geographic areas that are unserved or underserved by broadband. It would defeat the value of federal investment in such facilities if we were to prohibit such entities from bidding to provide service under the Healthcare Connect Fund.

*C. Recovery of Funds, Enforcement, and Debarment*

269. Recovery of Funds. Consistent with the 2007 *Program Management Order,* 72 FR 54214, September 24, 2007, Healthcare Connect Fund monies that are disbursed in violation of a Commission rule that implements the Act, or a substantive program goal, will be recovered. Recovery of funds will be directed at the party or parties (including both beneficiaries and

vendors) who have committed the statutory or rule violation. If more than one party shares responsibility for a statutory or rule violation, recovery actions may be initiated against both parties, and pursued until the amount is satisfied by one of the parties. Failure to repay recovery amounts may subject recipients to enforcement action by the Commission, in addition to any collection action.

270. Enforcement and Criminal Sanctions. In the 2007 *Program Management Order,* the Commission also found that sanctions, including enforcement action, are appropriate in cases of waste, fraud, and abuse in the universal service support programs, but not in cases of clerical or ministerial errors. If any participant or vendor fails to comply with Commission rules or orders, or fails to timely submit filings required by such rules or orders, the Commission has the authority to assess forfeitures for violations of such Commission rules and orders under section 503 of the Act. In addition, any participant or service provider that willfully makes a false statement(s) can be punished by fine or forfeiture under sections 502 and 503 of the Communications Act, or fine or imprisonment under Title 18 of the United States Code (U.S.C.) including, but not limited to, criminal prosecution pursuant to section 1001 of Title 18 of the U.S.C.

271. Debarment. In order to prevent fraud, and to prevent bad actors from continuing to participate in the universal service programs, § 54.8 of the Commission's rules provides that the Commission shall suspend and debar parties for conviction of, or civil judgment for, fraud or other criminal offenses arising out of activities associated with or related to the universal service support mechanisms, absent extraordinary circumstances. These debarment procedures in § 54.8 of the Commission's rules will apply to the Healthcare Connect Fund, just as they do to other Commission universal service programs.

## VII. Telecommunications Program Reform

272. This *Order* focuses on the creation of a new, reformed health care support mechanism. The Healthcare Connect Fund replaces the current RHC Internet Access Program. For the time being, we maintain the current RHC Telecommunications Program, which funds the difference between the rural rate for telecommunications services and the rate paid for comparable services in urban areas. In doing so, we recognize that the RHC Telecommunications Program is particularly important for extremely remote places like Alaska. However, we would expect the Healthcare Connect Fund to prove attractive to many of the HCPs that currently receive support under the Telecommunications Program, as well as to HCPs that do not currently participate in any RHC Program. Unlike the Telecommunications Program, the new program will provide a flat rate discount, a simpler application process for both single and consortium applicants, flexibility for consortia to design their networks in a cost-effective manner to best serve the needs of their communities, support for certain network-related expenses, the availability of multi-year and prepaid funding arrangements, and the option for health care provider self-construction. And most importantly, we also expect that many HCPs will be able to get higher bandwidth service for lower out-of-pocket costs under the new program. For all these reasons, we expect significant migration of HCPs out of the Telecommunications Program and into the Healthcare Connect Fund over time.

273. As the new Healthcare Connect Fund is implemented, we expect to consider whether the Telecommunications Program remains necessary, and if so whether reforms to the program are appropriate to ensure that any continuing support under that program is provided in a cost-effective manner. In doing so, we will, in particular, look at the needs of extremely remote places like Alaska. Such reforms could include changes to ensure subsidies provided under the program are set at appropriate levels, to provide greater incentives for cost-efficient purchasing by program participants, and to reduce the administrative costs of the program, both to participants and to USAC.

274. In the meantime, the current Telecommunications Program rules and procedures will continue to apply. In addition, because we view our health care universal service programs as accomplishing the same overarching goals, we make the performance goals and measures adopted in this *Order* applicable in the Telecommunications Program as well as to the Healthcare Connect Fund.

## VIII. Pilot Program for Skilled Nursing Facility Connections

275. Discussion. There is evidence that skilled nursing facilities are particularly well-suited to improve patient outcomes through greater use of broadband. By their nature, they are often remote from doctors and sophisticated laboratory and testing facilities, making the availability of EHRs and telehealth an especially valuable benefit to convalescents or patients for whom traveling to see a doctor, diagnostician, or specialist would be especially difficult. On the record before us, however, we are unable to determine how support for SNFs can be provided as part of an ongoing program in a ''technically feasible and economically reasonable'' manner, as required by section 254(h)(2)(A). Nor does the record currently allow us to balance the potential benefits of supporting SNFs against the potential impact on Fund demand. On this record, we reach no conclusion about whether or under what circumstances a SNF might qualify as a health care provider under the statute. We find, however, that funding connections used by SNFs in working with HCPs has the potential to enhance access to advanced services and to generate the associated health care benefits, and that a limited pilot program would enable us to gain experience and information that would allow us to determine whether such funding could be provided on a permanent basis in the future.

276. We therefore conclude that it is both technically feasible and economically reasonable to launch, as an initial step, a pilot program to test how to support broadband connections for SNFs, with safeguards to ensure that the support is directed toward SNFs that are using broadband to help provide hospital-type care for those patients, and that are using those broadband connections for telehealth applications that improve the quality and efficiency of health care delivery. The Skilled Nursing Facilities Pilot Program (SNF Pilot) will focus on determining how we can best utilize program support to assist SNFs that are using broadband connectivity to work with eligible HCPs to optimize care for patients in SNFs through the use of EHRs, telemedicine, and other broadband-enabled health care applications. We will fund up to $50 million for this purpose within the existing health care support mechanism, which remains capped at $400 million annually. We expect to implement this SNF Pilot in Funding Year 2014. We conclude that a total of $50 million may be disbursed for the SNF Pilot over a funding period not to exceed three years, which will moderate the annual impact on Fund demand.

277. We direct the Bureau to develop scoring criteria for applications for the SNF Pilot consistent with the program goals, soliciting input from HHS

(including IHS) and other stakeholders, and to specify other requirements for the SNF Pilot, including safeguards to ensure that funding is directed towards facilities that are engaged in the provision of skilled care comparable to what is available in a hospital or clinic. In order to maximize other Fund investments, only SNFs that do not currently have broadband services sufficient to support their intended telehealth activities are eligible to participate in the SNF Pilot. The Bureau shall give a preference to applicants that partner with existing or new consortia in the existing Pilot Program or the Healthcare Connect Fund and to SNFs located in rural areas, and will require applicants to demonstrate how proposed participation of SNFs will improve the overall provision of health care by eligible HCPs. The SNF Pilot Program will seek to collect data on a number of variables related to the broadband connections supported and their health care uses, so that at the conclusion of the SNF Pilot, the Commission can use the data gathered to determine how to proceed with regard to including SNFs in the Commission's health care support programs on a permanent basis.

278. Once the scoring criteria are developed, the Bureau shall release a Public Notice specifying the application procedures, including dates, deadlines, and other details of the application process. Except as necessary to meet the goals of the SNF Pilot, all requirements applicable to the Healthcare Connect Fund, as described in this *Order,* will apply to the SNF Pilot. After reviewing the applications, the Bureau then will announce the SNF Pilot participants. We delegate authority to the Bureau to implement the SNF Pilot consistent with the framework established in this *Order,* and specify that USAC shall disburse no more than $50 million to fund the SNF Pilot, as directed by the Bureau.

279. To be eligible for funding, those seeking to participate in SNF Pilot projects must commit to robust data gathering as well as analysis and sharing of the data and to submitting an annual report. Applicants will be expected to explain what types of data they intend to gather and how they intend to gather that data. At the conclusion of the Pilot, we expect applicants to be prepared to demonstrate with objective, observable metrics the health care cost savings and/or improved quality of patient care that have been realized through greater use of broadband to provide telemedicine to treat the residents of SNFs. We authorize USAC to use administrative expenses from the Fund to perform data gathering and related functions. The Commission plans to make this data public for the benefit of all interested parties, including third parties that may use such information for their own studies and observations.

## IX. Miscellaneous

### *A. Implementation Timeline*

280. Discussion. In this *Order,* we adopt for the Healthcare Connect Fund the same general funding schedule that is currently used in the Telecommunications and Internet Access Programs. Thus, applicants seeking support under the Healthcare Connect Fund may start the competitive bidding process anytime after January 1 (six months before the July 1 start of the funding year) and can submit a request for funding at any time during that funding year (*i.e.* between July 1 and June 30) for services received during that funding year.

281. For the first funding year of the Healthcare Connect Fund (FY 2013, which runs from July 1, 2013 to June 30, 2014), we adopt a schedule in which the funding for Pilot project applicants and new applicants begins at different times. The schedule for Pilot project applicants will remain unchanged. Starting on July 1, 2013, Pilot projects can seek universal service support under the Healthcare Connect Fund at a 65 percent discount level for existing HCP sites that have exhausted funding allocated to them as well as for new sites to be added to Pilot project networks.

282. For new applicants (either current Telecommunications or Internet Access Program participants or HCPs new to the Commission's programs), the funding schedule will be different in FY 2013. For FY 2013 only, the competitive bidding process for non-Pilot Healthcare Connect Fund applicants will start in late summer 2013, with applicants eligible to receive funds starting on January 1, 2014. This six-month delay is necessary to complete administrative processes relating to the new program, including obtaining approval for new forms under the Paperwork Reduction Act. Starting in FY 2014 (July 1, 2014-June 30, 2015), all applicants will be on the same funding year schedule and will be able to request funds from USAC between July 1-June 30, after completing a competitive bidding process that may start on or after January 1. In addition, to ensure a smooth transition and to minimize the administrative burden, eligible rural HCPs may continue to receive support under the RHC Internet Access Program through the end of funding year 2013, or through June 30, 2014.

283. A timeline of the funding schedule for the first year of the program for both Pilot project applicants and non-Pilot applicants appears in the figure below.

FUNDING YEAR 2013 IMPLEMENTATION TIMELINE

| | Jan. 2013 | Feb. 2013 | Mar. 2013 | Apr. 2013 | May 2013 | June 2013 | July 2013 | Aug. 2013 | Sept. 2013 | Oct. 2013 | Nov. 2013 | Dec. 2013 | Jan. 2014 | Feb. 2014 | Mar. 2014 | Apr. 2014 | May 2014 | June 2014 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Pilot Project Applicants ..... | Pilot projects determine their service needs and prepare RFPs in accordance with reformed program rules | | | Competitive bidding starts during second quarter 2013 | | | 2013 Funding | | | | | | | | | | | |
| Non-Pilot Project Applicants | New program applicants organize themselves, determine their service needs, and prepare RFPs | | | | | | Competitive bidding starts during third quarter 2013 and continues through fourth quarter 2013 | | | | | | 2013 Funding | | | | | |

284. As shown in the chart, starting the competitive bidding process in summer of 2013 will give non-Pilot Healthcare Connect Fund applicants time to organize as consortia, to determine their service needs, to design RFPs, and to complete the competitive bidding process before requesting funds from USAC. The experience of Pilot Program participants suggest that it takes at least six months for consortia to organize themselves, obtain the necessary authorizations from individual health care providers, assess broadband needs for the members, and

prepare RFPs. Pilot experience also suggests that can take approximately six additional months for a consortium to post the RFP, receive bids, evaluate bids properly, and negotiate a contract. If funding were available July 1, 2013, new applicants would not have enough time to complete all these steps. A possible result could be poorly organized consortia and ill-considered network designs, which would be inconsistent with our overarching program goals. In order to maximize the cost-effectiveness of bulk buying and competitive bidding, it is important to allow sufficient time for needs assessment, network design, and RFP preparation, as well sufficient time to solicit a range of competitive bids, select a vendor, and negotiate a contract. Making funding available beginning January 1, 2014, will allow time for all these activities to take place and to enable applicants to create well-designed networks and to obtain cost-effective bids.

285. This funding cycle also will encourage individual HCPs to join new or existing consortia rather than applying for funding alone. We expect that some potential single HCP applicants will receive offers to join existing Pilot project networks or newly-formed consortia. We encourage this collaboration. As discussed in the *Pilot Evaluation,* consortia are able to obtain higher bandwidths, lower rates, and better service quality, and they save on administrative costs. By making funding available at the same time for consortium applicants and single applicants, there will be more time for coordination and outreach between consortia applicants and their prospective members to occur. In the meantime, individual HCPs can still receive support through the Telecommunications or Internet Access Programs until they are eligible to seek funds under the Healthcare Connect Fund.

286. The same considerations do not apply to the Pilot projects. They have already completed the multi-step process of forming consortia and conducting competitive bidding. Allowing them to begin receiving funding effective July 1, 2013, will benefit both existing Pilot project HCPs and HCPs that seek to join existing Pilot projects. Allowing new sites joining existing Pilot projects to receive funds on July 1, 2013, will encourage those projects to grow and become large-scale networks. This funding schedule will also provide sites that will exhaust Pilot Program funding on or before July 1, 2013, a smooth transition into the new program. As the Commission observed in providing transitional funding to such Pilot project HCPs in the *Bridge Funding Order,* it is important for the sustainability of these networks that they are not forced to transition twice to different RHC programs—first to the Telecommunications or Internet Access Programs and then to the Healthcare Connect Fund. Without an orderly transition to the new program, some individual Pilot project HCPs could be at risk of discontinuing their participation in their respective networks. This would be contrary to the goals of the Pilot Program. Providing continuing support (albeit at the discount level applicable under the Healthcare Connect Fund) will help protect the investment the Commission has already made in these networks.

287. Outreach efforts will be essential in order to maximize potential of the Healthcare Connect Fund to support broadband and thereby transform the provision of health care for both individual HCPs and consortia. We therefore direct the Bureau to work with USAC to develop and execute a range of outreach activities to make HCPs aware of the new program and to educate them about the application process. We expect the Bureau will consult with other health care regulatory agencies (such as HHS); with state, local, and Tribal governments; with organizations representing HCPs (especially rural HCPs); and with other stakeholder groups to identify the best means to publicize the new program and to identify likely beneficiaries of the new program—both HCPs already participating in RHC programs and those that are not. We direct USAC to produce and disseminate outreach materials designed to educate eligible HCPs about the new program. In addition, we direct USAC to implement a mechanism for any interested party to subscribe to an automated alert from USAC when Healthcare Connect Fund requests for services or RFPs are posted, based on available filtering criteria.

### *B. Pilot Program Transition Process and Requests for Additional Funds*

288. The final deadline for filing requests for funding commitments in the RHC Pilot Program was June 30, 2012. As discussed in the *Pilot Evaluation,* several projects either withdrew from the program or merged with other projects, leaving 50 active Pilot projects. Every one of these remaining projects met the June 30 deadline for filing funding commitment requests. USAC is likely to complete the processing of all these funding requests by the end of calendar year 2012. Projects have up to six years from the date of issuance of the initial funding commitment letter for the applicable project to complete invoicing. Thus, by the latter part of calendar year 2017, all invoicing under the Pilot Program should be completed.

289. We would expect that as the Pilot projects and their member HCPs begin to exhaust Pilot funding, they will migrate as consortia into the Healthcare Connect Fund. Pilot participants are at different points in the process of implementing their networks and invoicing for the services or infrastructure in their projects. As discussed in the Commission's *Bridge Funding Order,* released in July 2012, a number of projects began to exhaust funding for some of their HCP sites in 2012, and the Commission provided continued funding for those sites pursuant to that order. Although we believe the rules we adopt in this *Order* should permit an easy transition for the Pilot Program participants, we delegate to the Bureau the authority to adopt any additional procedures and guidelines that may be necessary to smooth this process. In the Implementation Timeline section, we make support under the Healthcare Connect Fund for the transitioning Pilot Program participants effective on July 1, 2013, in order to ensure that there are no gaps in support for them. We permit them to use the same forms they used in the Pilot Program to secure funding pursuant to the *Bridge Funding Order*. Once their currently committed Pilot funds are exhausted, they will be required to provide a 35 percent contribution (not the 15 percent in the Pilot Program), and will not be eligible to receive support for anything that is not covered under the Healthcare Connect Fund.

290. Several Pilot projects filed requests for additional support, asking the Commission to use funds that were originally allocated to the Pilot Program, but were relinquished or unspent by other Pilot projects that withdrew or did not use their full awards. In their requests for additional funding, these pilot projects argued, among other things, that remaining Pilot funding should be redirected to projects that have demonstrated substantial progress with their original awards and that these additional funds would facilitate expansion of these successful projects.

291. In light of our creation of the new Healthcare Connect Fund, we deny these requests for additional Pilot Program funding. First, we note that Pilot projects may now seek additional funding through the Healthcare Connect Fund, once their current awards are exhausted, so there is no reason to

provide these Pilots preferential treatment over other consortia. Second, the Pilot Program was just that—a pilot, or trial, program launched to examine how the RHC program could be used to enhance HCP access to advanced services and to lay the foundation for the reformed program. It would be contrary to the limited scope of the Pilot Program to authorize additional Pilot Program support at this time. Finally, disbursement of additional Pilot program support would be inconsistent with the Commission's 2007 directive that Pilot Program applicants that were denied funding at that time could reapply for RHC funding in the reformed program. The Pilot projects requesting additional support may reapply in the reformed program, just as denied applicants may do. To grant these requesting Pilot projects additional support without requiring new applications would unfairly advantage them to the detriment of the denied Pilot applicants. Instead, we direct USAC to utilize unused Pilot Program funds for the demand associated with the Healthcare Connect Fund.

292. We also dismiss a request by the Texas Health Information Network Collaborative (TxHINC) for an extension of the June 30, 2012, Pilot Program deadline for projects to choose vendors and request funding commitment letters from USAC. In its request, TxHINC explains that, due to circumstances unique to Texas, it was delayed in choosing vendors and submitting funding requests to USAC. We dismiss TxHINC's request, finding it moot because TxHINC ultimately filed its request for funding commitments by the June 30, 2012 deadline.

*C. Prioritization of Funding*

293. In the *NPRM,* the Commission sought comment on whether to establish an annual cap of $100 million for support under the proposed Health Infrastructure Program, and sought comment on whether to establish criteria for prioritizing funding should the infrastructure program exceed that cap in a particular year. The Commission stated that it did not believe that the proposed Health Broadband Services Program initially would exceed the amount of available funds, but sought comment on possible prioritization procedures in the event that the total requests for funding under the Telecommunications and the new programs were to exceed the Commission's established $400 million annual cap.

294. Discussion. After consideration of the record received in response to the prioritization proposals in the *NPRM,* we will continue for the time being to apply the existing rule for addressing situations when total requests exceed the $400 million cap. Demand in this program has never come close to the $400 million annual cap, and we believe that we are unlikely to reach the cap in the foreseeable future. We direct USAC to periodically inform the public, through its web site, of the total dollar amounts that have been (1) requested by HCPs, as well as the total dollar amounts that have been actually committed by USAC for the funding year. USAC should post this information for both the $150 million cap on multi-year commitments and the $400 million cap that applies to the entire rural health care supporty mechanism. We do intend, however, to conduct further proceedings and issue an Order by the end of 2013 regarding the prioritization of support for all the RHC universal service programs. In the meantime, we will continue to rely upon, as a backstop, the approach codified in our existing rules, in the unlikely event that funding requests do reach the $400 million cap before we have established other prioritization procedures.

295. We believe it is unlikely that the combined health care support programs will approach the $400 million annual cap any time soon. It will likely take a significant amount of time for new consortia to organize, identify broadband needs, prepare RFPs, conduct competitive bidding, and select vendors, and for that reason it will be at least a year before funding will begin to flow to new applicants in the program. Given the Pilot Program experience, it will likely take even longer than that for many consortium applicants to be ready to seek funding under the Healthcare Connect Fund. In addition, our decision to require a 35 percent participant contribution, the limitations we impose on participation by non-rural HCPs, and the $150 million cap on annual funds for upfront payments all should moderate demand for funding in the near term. Finally, the pricing and other efficiencies made possible through consortium purchase of a broader array of services also should help drive down the cost of connections supported by the RHC component of the Universal Service Fund, as some Telecommunications Program participants migrate to the reformed program. For that reason, we project growth in the combined health care universal service fund to remain well under the $400 million cap over the next five years. Because we lack historical demand data for the Healthcare Connect Fund, and because the new program provides support for multi-year contracts and other upfront payments, we direct the Bureau, working with OMD and with the Administrator, to project the amounts to be collected for the USF for the early period of the new program, until such time as historical data provides an adequate basis for projecting demand.

*D. Offset Rule*

296. In the *NPRM,* the Commission explained that, despite its intended benefits, the offset rule can create inequities and inefficiencies. Based on the offset rule's shortcomings, the Commission proposed to eliminate the rule for participants in the Broadband Services Program (now part of the Healthcare Connect Fund) and the existing RHC program, and replace it with a rule allowing service providers to receive direct reimbursement from USAC. The Commission also sought comment on whether to retain the offset rule as an option for contributors who wish to utilize this method.

297. Discussion. While the original intent of the offset rule was to prevent waste, fraud, and abuse, we find that mandatory application of the rule is no longer necessary or advisable. Our action here is not the first instance in which the Commission has recognized the shortcomings of the offset rule. Indeed, the Bureau has waived the offset rule in several instances because strict application of the rule would have jeopardized the precarious finances and operations of some small, rural HCPs and their service providers. Further, service providers who are not required to contribute to the Fund already receive direct reimbursement. Based on the wide variety of vendors participating in the Pilot Program, we believe that direct reimbursement encouraged extensive bidding on RFPs in the Pilot Program. Likewise, we expect that enabling carriers to elect direct reimbursement in the Healthcare Connect Fund will encourage many more vendors to bid on RFPs than if offset was mandatory, because they will not have to wait to receive reimbursement until they can offset their universal service contribution amount.

298. In light of the shortcomings of the offset rule discussed above, and in consideration of the relevant comments, we revise § 54.611 of the Commission's rules to eliminate mandatory application of the offset procedure. Commenters unanimously support having the option of direct reimbursement, arguing, among other

things, that the offset requirement is obsolete, outdated, and administratively burdensome, and that it delays payment to carriers. We will permit USF contributors in the Telecommunications Program and the Healthcare Connect Fund to elect whether to treat the amount eligible for support as an offset against their universal service contribution obligation, or to receive direct reimbursement from USAC. We adopt a new rule for the Healthcare Connect Fund and the Telecommunications Program to effectuate this approach.

299. We note that, while commenters unanimously support direct reimbursement, they do not agree on whether to maintain offset as an option. TeleQuality recommends that service providers be given an offset option. Several other commenters do not directly advocate for an offset option but implicitly support it in their support of our proposed rule which includes an offset option. Conversely, a few commenters seek elimination of offset even as an option, with Charter Communications asking the Commission to ''formalize its recognition of the deficiencies of the offset rule by eliminating it in the new RHC programs.'' While we recognize the deficiencies of mandatory offset, we conclude it is appropriate to maintain offset as an option because it affords flexibility to carriers that deem offset simpler or otherwise more beneficial than direct reimbursement. Further, while carriers such as Charter and GCI prefer, and likely will choose, direct reimbursement, an offset option will not disadvantage them in any way. Finally, our revised rule is consistent with the choice available in the E-rate program, in which service providers may opt to use the offset method or receive direct reimbursement from USAC.

300. Also as we do in the E-rate program, each January we will require service providers to elect the method by which they will be reimbursed, and require that they remain subject to this method for the duration of the calendar year using Form 498, as is the case in the E-rate program. Form 498 will need to be revised to accommodate such elections in the health care support mechanism, and the revised form is unlikely to be approved by OMB under the Paperwork Reduction Act prior to January 31, 2013. Therefore, once revised Form 498 is available, we direct the Bureau to announce via public notice a 30-day window for service providers to make their offset/direct reimbursement election for the health care support mechanism for 2013. To the extent that a service provider fails to remit its monthly universal service obligation, however, any support owed to it under the Healthcare Connect Fund or the Telecommunications Program will automatically be applied as an offset to the service provider's annual universal service obligation.

*E. Delegation To Revise Rules*

301. Given the complexities associated with modifying existing rules as well as other reforms adopted in this *Order,* we delegate authority to the Bureau to make any further rule revisions as necessary to ensure the reforms adopted in this *Order* are reflected in the rules. This includes correcting any conflicts between the new and or revised rules and existing rules as well as addressing any omissions or oversights. If any such rule changes are warranted, the Bureau shall be responsible for such change. We note that any entity that disagrees with a rule change made on delegated authority will have the opportunity to file an Application for Review by the full Commission.

**X. Procedural Matters**

*A. Final Regulatory Flexibility Certification*

302. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Order

303. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other programs, the Commission adopted a program to provide discounted telecommunications services to public or non-profit health care providers (HCPs) that serve persons in rural areas. The changing technological landscape in rural health care over the past decade has prompted us to propose a new structure for the rural health care universal service support mechanism.

304. In this *Order,* we reform the Rural Health Care (RHC) Support Mechanism and adopt the Healthcare Connect Fund to expand HCP access to high-speed broadband capability and broadband health care networks, improving the quality and reducing the cost of health care throughout America, particularly in rural areas. Additionally, we adopt a pilot program to be implemented in 2014 to test how to support broadband connections for skilled nursing facilities (SNF Pilot).

305. Building on recommendations from the Staff Evaluation of the Pilot Program and comments received in response to the Commission's *NPRM* and the *July 19 Public Notice,* the reforms adopted in this *Order* build on the substantial impact the RHC program has on improving broadband connectivity to HCPs. Broadband connectivity generates a number of benefits and cost savings for HCPs. First, telemedicine enables patients in rural areas to access specialists and can improve the speed and enhance the quality of health care everywhere. Second, connectivity enables the exchange of electronic health records, which is likely to become more widespread as more providers adopt ''meaningful use'' of such records. Third, connectivity enables the exchange of large medical images (such as MRIs and CT scans), which can improve the speed and quality of diagnosis and treatment. Fourth, connectivity enables remote health care personnel to be trained *via* videoconference and to exchange other technical and medical expertise. Fifth, these ''telehealth'' applications have the potential to greatly reduce the cost of providing health care, for example by reducing length of stay or saving on patient transport costs. Finally, telemedicine can help rural HCPs keep and treat patients locally, thus enhancing revenue streams and helping rural providers to keep their doors open.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

306. No comments were filed in response to the IFRA attached to the *NPRM.* Notwithstanding the foregoing, some general comments discussing the impact of the proposed rules on small businesses were submitted in response to the *NPRM* and the *July 19 Public Notice.*

307. Several commenters expressed concern that administrative and reporting requirements for the new program might be too burdensome for small HCPs. Many commenters suggested abandoning quarterly reporting requirements in favor of annual or semi-annual reporting to reduce administrative burdens. Several commenters asked for a common

reporting format, and requested that reporting requirements not be too onerous. OHN recommended that the Commission authorize electronic signatures for all processes, especially the invoice approval process; permit electronic document submission; permit electronic administrative linkage into FCC/USAC project tracking systems; and support web-based electronic survey and reporting tools to gather, present, and compare data. Some commenters also expressed concern that imposing detailed technical requirements on health services infrastructure projects might ''discourage investment in broadband infrastructure projects and even foreclose the use of certain technologies.''

308. Responses to the *NPRM* and *July 19 Public Notice* also emphasized a streamlined approach to the competitive bidding requirements through the use of consortium applications and multiyear contracts. For example, one commenter stated that consortium applications would take the administrative burden off small HCPs who do not have the time or resources to apply for funds. However, one of the Pilot Projects, PSPN, noted that a mandated multi-year contract for at least 5 years could be burdensome to service providers.

309. Finally, one commenter specifically recommended that the Commission encourage participation from small and women-owned businesses by reducing or waiving matching contributions requirements for non-profit small and women-owned businesses acting as consortium leaders; streamlining administrative reporting requirements; and increasing the performance bond minimum requirement for contracts of $300,000 or higher from the $150,000 floor. In making the determinations reflected in this *Order,* we have considered the impact of our actions on small entities.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

310. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). In 2009, there were 27.5 million businesses in the United States, according to SBA Office of Advocacy estimates. The latest available Census data show that there were 5.9 million firms with employees in 2008 and 21.4 million without employees in 2008. Small firms with fewer than 500 employees represent 99.9 percent of the total (employers and non-employers), as the most recent data show there were 18,469 large businesses in 2008.

311. Small entities potentially affected by the reforms adopted herein include eligible non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for dedicated broadband networks.

i. Health Care Entities

312. As noted earlier, non-profit businesses and small governmental units are considered ''small entities'' within the RFA. In addition, we note that census categories and associated generic SBA small business size categories provide the following descriptions of small entities. The broad category of Ambulatory Health Care Services consists of further categories and the following SBA small business size standards. The categories of small business providers with annual receipts of $7 million or less consists of: Offices of Dentists; Offices of Chiropractors; Offices of Optometrists; Offices of Mental Health Practitioners (except Physicians); Offices of Physical, Occupational and Speech Therapists and Audiologists; Offices of Podiatrists; Offices of All Other Miscellaneous Health Practitioners; and Ambulance Services. The category of such providers with $10 million or less in annual receipts consists of: Offices of Physicians (except Mental Health Specialists); Family Planning Centers; Outpatient Mental Health and Substance Abuse Centers; Health Maintenance Organization Medical Centers; Freestanding Ambulatory Surgical and Emergency Centers; All Other Outpatient Care Centers, Blood and Organ Banks; and All Other Miscellaneous Ambulatory Health Care Services. The category of such providers with $13.5 million or less in annual receipts consists of: Medical Laboratories; Diagnostic Imaging Centers; and Home Health Care Services. The category of Ambulatory Health Care Services providers with $34.5 million or less in annual receipts consists of Kidney Dialysis Centers. For all of these Ambulatory Health Care Service Providers, census data indicate that there are a combined total of 368,143 firms that operated for all of 2002. Of these, 356,829 had receipts for that year of less than $5 million. In addition, an additional 6,498 firms had annual receipts of $5 million to $9.99 million; and additional 3,337 firms had receipts of $10 million to $24.99 million; and an additional 865 had receipts of $25 million to $49.99 million. We therefore estimate that virtually all Ambulatory Health Care Services providers are small, given SBA's size categories. We note, however, that our rules affect non-profit and public health care providers, and many of the providers noted above would not be considered ''public'' or ''non-profit.''

313. The broad category of Hospitals consists of the following categories, with an SBA small business size standard of annual receipts of $34.5 million or less: General Medical and Surgical Hospitals, Psychiatric and Substance Abuse Hospitals; and Specialty (Except Psychiatric and Substance Abuse) Hospitals. For these health care providers, census data indicate that there is a combined total of 3,800 firms that operated for all of 2002, of which 1,651 had revenues of less than $25 million, and an additional 627 firms had annual receipts of $25 million to $49.99 million. We therefore estimate that most Hospitals are small, given SBA's size categories.

314. The broad category of Nursing and Residential Care Facilities consists, *inter alia,* of the category of Skilled Nursing Facilities, with a small business size standard of annual receipts of $13.5 million or less. For these businesses, census data indicate that there were a total of 16,479 firms that operated for all of 2002. All of these firms had annual receipts of below $1 million. We therefore estimate that such firms are small, given SBA's size standard.

315. The broad category of Social Assistance consists, *inter alia,* of the category of Emergency and Other Relief Services, with a small business size standard of annual receipts of $7 million or less. For these health care providers, census data indicate that there were a total of 55 firms that operated for all of 2002. All of these firms had annual receipts of below $1 million. We therefore estimate that all such firms are small, given SBA's size standard.

ii. Providers of Telecommunications and Other Services

a. Telecommunications Service Providers

316. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 3,188 firms in this category that operated for the entire year. Of this total, 3144 firms employed 999 or fewer employees, and 44 firms employed 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small entities that may be affected by rules adopted pursuant to this *Order.*

317. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by rules adopted pursuant to this *Order.*

318. We have included small incumbent LECs in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

319. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of these 72 carriers, an estimated 70 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to this *Order.*

320. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to this *Order.*

321. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms employed 999 or fewer employees and 15 employed 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small entities that may be affected by the rules adopted pursuant to this *Order.*

322. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the *2008 Trends Report,* 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

323. *Satellite Telecommunications and All Other Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

324. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite

telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to this *Order.*

325. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

b. Internet Service Providers

326. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard of 1,500 or fewer employees. According to Census Bureau data from 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to this *Order.*

327. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to this *Order.*

328. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to this *Order.*

c. Vendors and Equipment Manufacturers

329. *Vendors for Infrastructure Development or ''Network Buildout'' Construction.* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. The closest applicable definition of a small entity are the size standards under the SBA rules applicable to manufacturers of ''Radio and Television Broadcasting and Communications Equipment'' (RTB) and ''Other Communications Equipment.''

330. *Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises *establishments* primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.'' The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: All such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

331. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

332. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).'' The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: All such firms

having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

333. The reporting and recordkeeping requirements in this *Order* could have an impact on both small and large entities. However, even though the impact may be more financially burdensome for smaller entities, the Commission believes the impact of such requirements is outweighed by the benefit of providing the additional support necessary to make broadband available for HCPs to provide health care to rural and remote areas, and to make broadband rates for public and non-profit HCPs lower. Further, these requirements are necessary to ensure that the statutory goals of section 254 of the Telecommunications Act of 1996 are met without waste, fraud, or abuse.

334. *Eligibility Determination.* For each HCP listed, applicants will be required to provide the HCP's address and contact information; identify the eligible HCP type; provide an address for each physical location that will receive supported connectivity; provide a brief explanation for why the HCP is eligible under the Act and the Commission's rules and orders; and certify to the accuracy of this information under penalty of perjury.

335. Consortium Leaders should obtain supporting information and/or documents to support eligibility for each HCP when they collect LOAs. Consortium applicants must also submit documentation regarding network planning as part of the application process, although the Commission will monitor experience under the new rule, and may make adjustments in the future, if necessary, to ensure that this requirement is minimally burdensome while creating appropriate incentives for applicants to make thoughtful, cost-effective purchases. Applicants in the Healthcare Connect Fund are not required to submit technology plans with their requests for service, but the Commission may re-evaluate this decision in the future based on experience with the new program.

336. *Process for initiating competitive bidding for requested services.* Applicants must develop appropriate evaluation criteria for selecting the winning bid *before* submitting a request for services to USAC to initiate competitive bidding. The evaluation criteria should be based on the Commission's definition of ''cost-effective,'' and include the most important criteria needed to provide health care, as determined by the applicant. Applicants should also begin to identify possible sources for the 35 percent of undiscounted costs.

337. Applicants subject to competitive bidding must submit new FCC Form 461 and supporting documentation to the Universal Service Administrative Company (USAC). On Form 461, applicants must provide basic information regarding the HCP(s) on the application (including contact information for potential bidders); a brief description of the desired services; and certifications designed to ensure compliance with program rules and minimize waste, fraud, and abuse.

338. Applicants must supplement their Form 461 with a Request for Proposals (RFP) on USAC's Web site in the following instances: (1) Consortium applications that seek more than $100,000 in program support in a funding year; (2) applicants who are required to issue an RFP under applicable state or local procurement rules or regulations; and (3) consortium applications that seek support for infrastructure (*i.e.* HCP-owned facilities) as well as services. In addition, any applicant is free to post an RFP.

339. Applicants also are required to submit the following documents, which will not be publicly posted by USAC.

340. *Form 460.* Applicants should submit Form 460 to certify to the eligibility of HCP(s) listed on the application, if they have not previously done so.

341. *Letters of Agency for Consortium Applicants.* Consortium applicants should submit letters of agency demonstrating that the Consortium Leader is authorized to submit Forms 460, 461, and 462, as applicable, including required certifications and any supporting materials, on behalf of each participating HCP in the consortium.

342. *Declaration of Assistance.* As in the Pilot Program, all applicants must identify, through a Declaration of Assistance, any consultants, service providers, or any other outside experts, whether paid or unpaid, who aided in the preparation of their applications. The Declaration of Assistance must be filed with the Form 461. Identifying these consultants and outside experts facilitates the ability of USAC, the Commission, and law enforcement officials to identify and prosecute individuals who may seek to defraud the program or engage in other illegal acts. To ensure participants comply with the competitive bidding requirements, they must disclose all of the types of relationships explained above.

343. Finally, all applicants subject to competitive bidding must certify to USAC that the services and/or infrastructure selected are, to the best of the applicant's knowledge, the most cost-effective option available. Applicants must submit documentation to USAC to support their certifications, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and any other related documents, such as bid evaluation sheets; a list of people who evaluated bids (along with their title/role/relationship to the applicant organization); memos, board minutes, or similar documents related to the vendor selection/award; copies of notices to winners; and any correspondence with service providers during the bidding/evaluation/award phase of the process. Bid evaluation documents need not be in a certain format, but the level of documentation should be appropriate for the scale and scope of the services for which support is requested.

344. *Reporting Requirements.* Data from participants and USAC are essential to the Commission's ability to evaluate whether the program is meeting its performance goals, and to measure progress toward meeting those goals. In the Healthcare Connect Program, each consortium lead entity must file an annual report with USAC on or before July 30 for the preceding funding year (*i.e.,* July 1 through and including June 30). Individual HCP applicants do not have to fine annual reports, however.

345. *Recordkeeping.* Consistent with §§ 54.619(a), (b), and (d) of the Commission's current rules, participants and service providers in the Healthcare Connect Fund must maintain certain documentation related to the purchase and delivery of services funded by the RHC programs, and will be required to produce these records upon request.

346. The *NPRM* also proposed to: (1) clarify that the documents to be retained by participants and service providers must include all records related to the participant's application for, receipt of, and delivery of discounted services; and (2) amend the existing rules to mandate that service providers, upon request, produce the records kept pursuant to the Commission's recordkeeping requirement. This *Order* adopts rules consistent with these proposals to enable the Commission and USAC to

obtain the records necessary for effective oversight of the RHC programs.

347. *Certifications.* Consistent with §§ 54.603(b) and 54.615(c) of the current rules, participants in the Healthcare Connect Fund must certify under oath to compliance with certain program requirements, including the requirements to select the most cost-effective bid and to use program support solely for purposes reasonably related to the provision of health care services or instruction. For individual HCP applicants, required certifications must be provided and signed by an officer or director of the HCP, or other authorized employee of the HCP (electronic signatures are permitted). For consortium applicants, an officer, director, or other authorized employee of the Consortium Leader must sign the required certifications.

348. *Vendors SPIN Requirement.* All vendors participating in the Healthcare Connect Fund must obtain a Service Provider Identification Number (SPIN) by submitting an FCC Form 498. The SPIN is a unique number assigned to each service provider by USAC, and serves as USAC's tool to ensure that support is directed to the correct service provider. SPINs must be assigned before USAC can authorize support payments. Therefore, all service providers submitting bids to provide services to selected participants will need to complete and submit a Form 498 to USAC for review and approval if selected by a participant before funding commitments can be made.

349. *Skilled Nursing Facility (SNF) Pilot.* SNF Pilot applicants must demonstrate how proposed participation of SNFs will improve the overall provision of health care by eligible HCPs. SNF Pilot applicants and participants must submit data on a number of variables (to be determined by the Bureau at a later date) related to the broadband connections supported and their health care uses, so that at the conclusion of the SNF Pilot, the Commission can use the data gathered to determine how to proceed with regard to including SNFs in the Commission's health care support programs on a permanent basis. SNF Pilot applicants also must commit to robust data gathering and analysis, and to submission of an annual report. Applicants must explain what types of data they intend to gather and how they intend to gather that data. At the conclusion of the Pilot, participants must demonstrate the health care cost savings and/or improved quality of patient care that have been realized through greater use of broadband to provide telemedicine to treat the residents of SNFs.

5. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

350. The FRFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' Accordingly, we have taken the following steps to minimize the impact on small entities.

351. *Consortium approach.* Consistent with support from commenters, this *Order* adopts a streamlined application process that facilitates consortium applications, which should enable HCPs to file many fewer applications and to share the administrative costs of all aspects of participation in the program. Each consortium must file only one application, instead of each individual HCP filing separate applications. Applying as a consortium is simpler, cheaper, and more efficient for small HCPs. Under the consortium approach adopted in this *Order,* the expenses associated with planning the network, applying for funding, issuing RFPs, contracting with service providers, and invoicing are shared among a number of providers. This should help ensure that applicants, including small entities, will not be deterred from applying for support due to administrative burdens.

352. *Flat-Rate Discount.* In order to encourage participation in the Healthcare Connect Fund and relieve planning uncertainties for smaller entities, this *Order* adopts a flat-rate discount of 65 percent, clearly identifying the level of support that providers can reasonably expect to receive. By adopting a flat-rate discount, the Commission provides a clear and predictable support amount, thereby helping eligible HCPs to plan for their broadband needs. This approach is also less complex and easier to administer, which should expedite the application process and reduce administrative expenses for small entities.

353. *Competitive Bidding Exemptions.* While competitive bidding is essential to the program, it is not without administrative costs to participants. In three situations, exempting funding requests from competitive bidding strikes a common-sense balance between efficient use of program funds and reducing regulatory costs. First, based on our experience in the existing RHC programs, it will be more administratively efficient to exempt applicants seeking support for relatively small amounts. The threshold for this exemption is $10,000 or less in total annual undiscounted costs (which, with a 35 percent minimum applicant contribution, results in a maximum of $6,500 annually in Fund support). Second, if an applicant is required by federal, state or local law or regulations to purchase services from a master service agreement negotiated by a governmental entity on its behalf, and the master service agreement was awarded pursuant to applicable federal, state, Tribal, or local competitive bidding processes, the applicant is not required to re-undergo competitive bidding. Third, applicants who wish to request support under the Healthcare Connect Fund while utilizing contracts previously approved by USAC (under the Pilot Program, the RHC Telecommunications or Internet Access Programs, or the E-rate program) may do so without undergoing additional competitive bidding, as long as they do not request duplicative support for the same service and otherwise comply with all Healthcare Connect Fund requirements. In addition, consistent with current RHC program policies, applicants who receive evergreen status or multi-year commitments under the Healthcare Connect Fund are exempt from competitive bidding for the duration of the contract. Applicants who are exempt from competitive bidding can proceed directly to submitting a funding commitment request.

354. *Evergreen Contracts.* The existing RHC program allows ''evergreen'' contracts, meaning that for the life of a multi-year contract deemed evergreen by USAC, HCPs need not annually rebid the service or post an FCC Form 465. As stated in the *NPRM,* codification of existing evergreen procedures likely will benefit participating HCPs by affording them: (1) Lower prices due to longer contract terms; and (2) reduced administrative burdens due to fewer required Form 465s. Commenters supported the *NPRM's* proposal to codify the Commission's existing evergreen procedures, arguing, among other things, that the evergreen procedures significantly reduce HCPs'

administrative and financial burdens. This *Order* also makes one change to the existing evergreen policy to allow participants to exercise voluntary options to extend an evergreen contract without undergoing additional competitive bidding, subject to certain limitations.

355. *Multi-year funding commitments:* Applicants may receive multi-year funding commitments that cover a period of up to three funding years. The multi-year funding commitments will reduce uncertainty and administrative burden by eliminating the need for HCPs to apply every year for funding, as is required under the existing RHC Telecommunications and Internet Access Programs, and reduce administrative expenses both for the projects and for USAC. Multi-year funding commitments, prepaid leases, and IRUs also encourage term discounts and produce lower rates from vendors. The funding of HCP-constructed-and-owned infrastructure has allowed Pilot projects to choose this option where it is the most cost-effective way to obtain broadband.

356. *Annual Reporting Requirement:* Participants in the Healthcare Connect Fund must submit reports on an annual basis, consistent with suggestions from commenters to minimize the burdens of reporting requirements. Submitting annual, rather than quarterly reports, as required in the Pilot Program, will minimize the burden on participants and USAC alike while still supporting performance evaluation and enabling the Commission to evaluate the prevention of waste, fraud, and abuse. Because the Commission expects to be able to collect data from individual applicants in the Healthcare Connect Fund on forms they already submit, individual applicants are not required to submit annual reports unless a report is required for other reasons. To further minimize the burden on participants, the Order delegates authority to the Bureau to work with USAC to develop a simple and streamlined reporting system that leverages data collected through the application process, eliminating the need to resubmit any information that has already been provided to USAC.

357. *Sustainability plans for applicants that build their own infrastructure.* In the *NPRM,* the Commission proposed to require sustainability plans similar to those required in the Pilot Program for HCPs who intended to have an ownership interest, indefeasible right of use, or capital lease interest in supported facilities. The Pilot Program required projects to submit a copy of their sustainability plan with every quarterly report. Based on the Pilot Program, the Commission concludes that submission of sustainability reports on a quarterly basis is unnecessarily burdensome for applicants, and provides little useful information to USAC. Accordingly, sustainability reports for the Healthcare Connect Fund are only required to be re-filed if there is a material change that would impact projected income or expenses by the greater of 20 percent or $100,000 from the previous submission, or if the applicant submits a funding request based on a new Form 461 (*i.e.,* a new competitively bid contract). In such an event, the revised sustainability report must be provided to USAC no later than the end of the relevant quarter, clearly showing (*i.e.* by redlining or highlighting) what has changed.

358. *Skilled Nursing Facility Pilot Requirements.* Participants in the SNF Pilot must submit data on a number of variables; gather and analyze data; submit annual reports; and, at the conclusion of the Pilot, demonstrate the health care cost savings and/or improved quality of patient care that have been realized through greater use of broadband. While these requirements may impact small entities, we have determined that the benefits of these requirements—namely, preserving program integrity and ensuring cost-effectiveness—outweigh any costs. Specifically, we do not believe that these requirements will have significant impact on small entities for two reasons. First, the SNF is a voluntary pilot program and, as such, entities may choose whether to apply. Second, the Bureau will give preference to applicants that partner with existing or new consortia in the existing Pilot Program or the Healthcare Connect Fund. Small SNFs joining consortia should experience minimal reporting burdens as these consortia typically have the leadership and expertise to effectively assist their members with administrative requirements.

359. *Report to Congress:* The Commission will send a copy of the *Order,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order,* including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* (and FRFA summaries thereof) will also be published in the **Federal Register**.

### *B. Paperwork Reduction Act Analysis*

360. This *Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe the impacts that might affect small businesses, which include most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis.

### *C. Congressional Review Act*

361. The Commission will send a copy of this order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

## XI. Ordering Clauses

362. Accordingly, it is ordered that, pursuant to sections 1, 2, 4(i)–(j), 201(b), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201(b), and 254, this Report and Order is adopted, and, pursuant to 5 U.S.C. 553(d)(3) and §§ 1.4(b)(1), 1.103(a), and 1.427(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), 1.427(a).

363. It is further ordered that Part 54 of the Commission's rules, 47 CFR Part 54, is amended as set forth in the Appendix, and such rules shall become effective April 1, 2013, except for those rules and requirements that involve Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval and of effective dates of such rules.

364. It is further ordered that pursuant to 5 U.S.C. 801(a)(1)(A), the Commission shall send a copy of this Report and Order to Congress and to the Government Accountability Office pursuant to the Congressional Review Act.

365. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

366. It is further ordered that, pursuant to the authority contained in

sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, the requests for additional Rural Health Care Pilot Program funding filed by Oregon Health Network, California Telehealth Network, Southwest Telehealth Access Grid, Western New York Rural Area Health Education Center, Inc., Palmetto State Providers Network, and Health Information Exchange of Montana *are denied.*

367. It is further ordered that, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, the request for an extension of the June 30, 2012, Rural Health Care Pilot Program deadline filed by the Texas Health Information Network Collaborative is dismissed as moot.

368. It is further ordered that, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, the requests for waiver of 47 CFR 54.611 of the Commission's rules filed by Network Services Solutions, L.L.C., and Richmond Connections, Inc., are granted.

369. It is further ordered that, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, USAC shall make an initial reimbursement payment to Network Services Solutions, L.L.C., and Richmond Connections, Inc., no later than December 31, 2012 as described herein.

370. It is further ordered that, pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154 and 254, the requests for stay of enforcement of 47 CFR § 54.611 of the Commission's rules filed by Network Services Solutions, L.L.C., and Richmond Connections, Inc., are dismissed as moot.

**List of Subjects in 47 CFR Part 54**

Communications common carriers, Health facilities, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

## PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

**Authority:** Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

■ 2. In § 54.5, revise the definition of ''rural area'' to read as follows:

**§ 54.5 Terms and definitions.**

* * * * *

*Rural area.* For purposes of the schools and libraries universal support mechanism, a ''rural area'' is a nonmetropolitan county or county equivalent, as defined in the Office of Management and Budget's (OMB) Revised Standards for Defining Metropolitan Areas in the 1990s and identifiable from the most recent Metropolitan Statistical Area (MSA) list released by OMB, or any contiguous non-urban Census Tract or Block Numbered Area within an MSA–listed metropolitan county identified in the most recent Goldsmith Modification published by the Office of Rural Health Policy of the U.S. Department of Health and Human Services.

* * * * *

■ 3. Add § 54.600 to subpart G and an undesignated center heading to read as follows:

**Defined Terms and Eligibility**

**§ 54.600 Terms and definitions.**

As used in this subpart, the following terms shall be defined as follows:

(a) *Health care provider.* A ''health care provider'' is any:

(1) Post-secondary educational institution offering health care instruction, including a teaching hospital or medical school;

(2) Community health center or health center providing health care to migrants;

(3) Local health department or agency;

(4) Community mental health center;

(5) Not-for-profit hospital;

(6) Rural health clinic; or

(7) Consortium of health care providers consisting of one or more entities described in paragraphs (a)(1) through (a)(6) of this section.

(b) *Rural area.* (1) A ''rural area'' is an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. For purposes of this rule, ''Core Based Statistical Area,'' ''Urban Area,'' and ''Place'' are as identified by the Census Bureau.

(2) Notwithstanding the definition of ''rural area,'' any health care provider that is located in a ''rural area'' under the definition used by the Commission prior to July 1, 2005, and received a funding commitment from the rural health care program prior to July 1, 2005, is eligible for support under this subpart.

(c) *Rural health care provider.* A ''rural health care provider'' is an eligible health care provider site located in a rural area.

■ 4. Revise § 54.601 to read as follows:

**§ 54.601 Health care provider eligibility.**

(a) *Eligible health care providers.* (1) Only an entity that is either a public or non-profit health care provider, as defined in this subpart, shall be eligible to receive support under this subpart.

(2) Each separate site or location of a health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart.

(b) *Determination of health care provider eligibility for the Healthcare Connect Fund.* Health care providers in the Healthcare Connect Fund may certify to the eligibility of particular sites at any time prior to, or concurrently with, filing a request for services to initiate competitive bidding for the site. Applicants who utilize a competitive bidding exemption must provide eligibility information for the site to the Administrator prior to, or concurrently with, filing a request for funding for the site. Health care providers must also notify the Administrator within 30 days of a change in the health care provider's name, site location, contact information, or eligible entity type.

■ 5. Add § 54.602 to subpart G to read as follows:

**§ 54.602 Health care support mechanism.**

(a) *Telecommunications Program.* Rural health care providers may request support for the difference, if any, between the urban and rural rates for telecommunications services, subject to the provisions and limitations set forth in §§ 54.600 through 54.625 and §§ 54.671 through 54.680. This support is referred to as the ''Telecommunications Program.''

(b) *Healthcare Connect Fund.* Eligible health care providers may request support for eligible services, equipment, and infrastructure, subject to the provisions and limitations set forth in §§ 54.600 through 54.602 and §§ 54.630

through 54.680. This support is referred to as the ''Healthcare Connect Fund.''

(c) *Allocation of discounts.* An eligible health care provider that engages in both eligible and ineligible activities or that collocates with an ineligible entity shall allocate eligible and ineligible activities in order to receive prorated support for the eligible activities only. Health care providers shall choose a method of cost allocation that is based on objective criteria and reasonably reflects the eligible usage of the facilities.

(d) *Health care purposes.* Services for which eligible health care providers receive support from the Telecommunications Program or the Healthcare Connect Fund must be reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided.

■ 6. In § 54.603, add an undesignated center heading; revise the section heading and paragraphs (a), (b)(1) introductory text, and (b)(1)(i) and (ii), and remove and reserve paragraph (b)(1)(iii).

The addition and revisions read as follows:

**Telecommunications Program**

**§ 54.603 Competitive bidding and certification requirements.**

(a) *Competitive bidding requirement.* To select the telecommunications carriers that will provide services eligible for universal service support to it under the Telecommunications Program, each eligible health care provider shall participate in a competitive bidding process pursuant to the requirements established in this section and any additional and applicable state, Tribal, local, or other procurement requirements.

(b) * * *

(1) An eligible health care provider seeking to receive telecommunications services eligible for universal service support under the Telecommunications Program shall submit a completed FCC Form 465 to the Administrator. FCC Form 465 shall be signed by the person authorized to order telecommunications services for the health care provider and shall include, at a minimum, that person's certification under oath that:

(i) The requester is a public or non-profit entity that falls within one of the seven categories set forth in the definition of health care provider, listed in § 54.600(a);

(ii) The requester is physically located in a rural area;

* * * * *

■ 7. In § 54.604, revise the section heading; redesignate paragraphs (b) and (c) as paragraphs (d) and (e) respectively; redesignate paragraph (a) as paragraph (c) and add new paragraphs (a) and (b); and revise newly redesignated paragraph (c) introductory text to read as follows:

**§ 54.604 Consortia, telecommunications services, and existing contracts.**

(a) *Consortia.* (1) Under the Telecommunications Program, an eligible health care provider may join a consortium with other eligible health care providers; with schools, libraries, and library consortia eligible under subpart F of this part; and with public sector (governmental) entities to order telecommunications services. With one exception, eligible health care providers participating in consortia with ineligible private sector members shall not be eligible for supported services under this subpart. A consortium may include ineligible private sector entities if such consortium is only receiving services at tariffed rates or at market rates from those providers who do not file tariffs.

(2) For consortia, universal service support under the Telecommunications Program shall apply only to the portion of eligible services used by an eligible health care provider.

(b) *Telecommunications Services.* Any telecommunications service that is the subject of a properly completed bona fide request by a rural health care provider shall be eligible for universal service support, subject to the limitations described in this paragraph. The length of a supported telecommunications service may not exceed the distance between the health care provider and the point farthest from that provider on the jurisdictional boundary of the largest city in a state as defined in § 54.625(a).

(c) *Existing contracts.* A signed contract for services eligible for Telecommunications Program support pursuant to this subpart between an eligible health care provider as defined under § 54.600 and a telecommunications carrier shall be exempt from the competitive bid requirements set forth in § 54.603(a) as follows:

* * * * *

■ 8. In § 54.605, revise paragraph (a) to read as follows:

**§ 54.605 Determining the urban rate.**

(a) If a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program that is to be provided over a distance that is less than or equal to the ''standard urban distance,'' as defined in paragraph (c) of this section, for the state in which it is located, the ''urban rate'' for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

* * * * *

■ 9. In § 54.609, revise paragraphs (a) introductory text, (a)(1)(iv) and (3), (d)(1) and (2), and (e)(1) to read as follows:

**§ 54.609 Calculating support.**

(a) The amount of universal service support provided for an eligible service to be funded from the Telecommunications Program shall be the difference, if any, between the urban rate and the rural rate charged for the service, as defined herein. In addition, all reasonable charges that are incurred by taking such services, such as state and federal taxes shall be eligible for universal service support. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. Under the Telecommunications Program, rural health care providers may choose one of the following two support options.

(1) * * *

(iv) A telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium, and the consortium must establish the actual distance-based charges for the health care provider's portion of the shared telecommunications services.

* * * * *

(3) *Base rate support-consortium.* A telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium, and the consortium must establish the applicable rural base rates for telecommunications service for the health care provider's portion of the shared telecommunications services, as well as the applicable urban base rates for the telecommunications service.

* * * * *

(d) * * *

(1) Rural public and non-profit health care providers may receive support for rural satellite services under the Telecommunications Program, even when another functionally similar terrestrial-based service is available in that rural area. Support for satellite services shall be capped at the amount the rural health care provider would have received if they purchased a functionally similar terrestrial-based alternative.

(2) Rural health care providers seeking support from the Telecommunications Program for satellite services shall provide to the Administrator with the Form 466, documentation of the urban and rural rates for the terrestrial-based alternatives.

* * * * *

(e) * * *

(1) *Calculation of support.* The support amount allowed under the Telecommunications Program for satellite services provided to mobile rural health care providers is calculated by comparing the rate for the satellite service to the rate for an urban wireline service with a similar bandwidth. Support for satellite services shall not be capped at an amount of a functionally similar wireline alternative. Where the mobile rural health care provider provides service in more than one state, the calculation shall be based on the urban areas in each state, proportional to the number of locations served in each state.

* * * * *

**§ 54.611 [Removed]**

■ 10. Remove § 54.611.

**§ 54.613 [Amended]**

■ 11. In § 54.613, remove and reserve paragraph (b).

■ 12. In § 54.615, revise paragraphs (b), (c) introductory text, and (c)(2) and remove and reserve paragraph (c)(3).

The revisions read as follows:

**§ 54.615 Obtaining services.**

* * * * *

(b) *Receiving supported rate.* Upon receiving a bona fide request, as defined in paragraph (c) of this section, from a rural health care provider for a telecommunications service that is eligible for support under the Telecommunications Program, a telecommunications carrier shall provide the service at a rate no higher than the urban rate, as defined in § 54.605, subject to the limitations applicable to the Telecommunications Program.

(c) *Bona fide request.* In order to receive services eligible for support under the Telecommunications Program, an eligible health care provider must submit a request for services to the telecommunications carrier, signed by an authorized officer of the health care provider, and shall include that person's certification under oath that:

* * * * *

(2) The requester is physically located in a rural area, or if the requester is a mobile rural health care provider requesting services under § 54.609(e), that the requester has certified that it is serving eligible rural areas;

* * * * *

**§ 54.617 [Removed]**

■ 13. Remove § 54.617.

■ 14. In § 54.619, revise paragraphs (a)(1) and (d) to read as follows:

**§ 54.619 Audits and recordkeeping.**

(a) * * *

(1) Health care providers shall maintain for their purchases of services supported under the Telecommunications Program documentation for five years from the end of the funding year sufficient to establish compliance with all rules in this subpart. Documentation must include, among other things, records of allocations for consortia and entities that engage in eligible and ineligible activities, if applicable. Mobile rural health care providers shall maintain annual logs indicating: The date and locations of each clinic stop; and the number of patients served at each such clinic stop.

* * * * *

(d) *Service providers.* Service providers shall retain documents related to the delivery of discounted services under the Telecommunications Program for at least 5 years after the last day of the delivery of discounted services. Any other document that demonstrates compliance with the statutory or regulatory requirements for the rural health care mechanism shall be retained as well.

**§ 54.621 [Removed]**

■ 15. Remove § 54.621.

■ 16. Revise § 54.623 to read as follows:

**§ 54.623 Annual filing and funding commitment requirement.**

(a) *Annual filing requirement.* Health care providers seeking support under the Telecommunications Program shall file new funding requests for each funding year.

(b) *Long term contracts.* Under the Telecommunications Program, if health care providers enter into long term contracts for eligible services, the Administrator shall only commit funds to cover the portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought.

■ 17. Revise § 54.625 to read as follows:

**§ 54.625 Support for telecommunications services beyond the maximum supported distance for rural health care providers.**

(a) The maximum support distance for the Telecommunications Program is the distance from the health care provider to the farthest point on the jurisdictional boundary of the city in that state with the largest population, as calculated by the Administrator.

(b) An eligible rural health care provider may purchase an eligible telecommunications service supported under the Telecommunications Program that is provided over a distance that exceeds the maximum supported distance.

(c) If an eligible rural health care provider purchases an eligible telecommunications service supported under the Telecommunications Program that exceeds the maximum supported distance, the health care provider must pay the applicable rural rate for the distance that such service is carried beyond the maximum supported distance.

■ 18. Add § 54.630 and an undesignated center heading to subpart G to read as follows:

**Healthcare Connect Fund**

**§ 54.630 Eligible recipients.**

(a) *Rural health care provider site—individual and consortium.* Under the Healthcare Connect Fund, an eligible rural health care provider may receive universal service support by applying individually or through a consortium. For purposes of the Healthcare Connect Fund, a ''consortium'' is a group of two or more health care provider sites that request support through a single application. Consortia may include health care providers who are not eligible for support under the Healthcare Connect Fund, but such health care providers cannot receive support for their expenses and must participate pursuant to the cost allocation guidelines in § 54.639(d).

(b) *Limitation on participation of non-rural health care provider sites in a consortium.* An eligible non-rural health care provider site may receive universal service support only as part of a consortium that includes more than 50 percent eligible rural health care provider sites.

(c) *Limitation on large non-rural hospitals.* Each eligible non-rural public

or non-profit hospital site with 400 or more licensed patient beds may receive no more than $30,000 per year in Healthcare Connect Fund support for eligible recurring charges and no more than $70,000 in Healthcare Connect Fund support every 5 years for eligible nonrecurring charges, exclusive in both cases of costs shared by the network.

■ 19. Add § 54.631 to subpart G to read as follows:

**§ 54.631 Designation of Consortium Leader.**

(a) *Identifying a Consortium Leader.* Each consortium seeking support from the Healthcare Connect Fund must identify an entity or organization that will be the lead entity (the ''Consortium Leader'').

(b) *Consortium Leader eligibility.* The Consortium Leader may be the consortium itself (if it is a distinct legal entity); an eligible health care provider participating in the consortium; or a state organization, public sector (governmental) entity (including a Tribal government entity), or non-profit entity that is ineligible for Healthcare Connect Fund support. Ineligible state organizations, public sector entities, or non-profit entities may serve as Consortium Leaders or provide consulting assistance to consortia only if they do not participate as potential vendors during the competitive bidding process. An ineligible entity that serves as the Consortium Leader must pass on the full value of any discounts, funding, or other program benefits secured to the consortium members that are eligible health care providers.

(c) *Consortium Leader responsibilities.* The Consortium Leader's responsibilities include the following:

(1) *Legal and financial responsibility for supported activities.* The Consortium Leader is the legally and financially responsible entity for the activities supported by the Healthcare Connect Fund. By default, the Consortium Leader is the responsible entity if audits or other investigations by Administrator or the Commission reveal violations of the Act or Commission rules, with individual consortium members being jointly and severally liable if the Consortium Leader dissolves, files for bankruptcy, or otherwise fails to meet its obligations. Except for the responsibilities specifically described in paragraphs (c)(2) through (c)(6) of this section, consortia may allocate legal and financial responsibility as they see fit, provided that this allocation is memorialized in a formal written agreement between the affected parties (*i.e.,* the Consortium Leader, and the consortium as a whole and/or its individual members), and the written agreement is submitted to the Administrator for approval with or prior to the Request for Services. Any such agreement must clearly identify the party(ies) responsible for repayment if the Administrator is required, at a later date, to recover disbursements to the consortium due to violations of program rules.

(2) *Point of contact for the FCC and Administrator.* The Consortium Leader is responsible for designating an individual who will be the ''Project Coordinator'' and serve as the point of contact with the Commission and the Administrator for all matters related to the consortium. The Consortium Leader is responsible for responding to Commission and Administrator inquiries on behalf of the consortium members throughout the application, funding, invoicing, and post-invoicing period.

(3) *Typical applicant functions, including forms and certifications.* The Consortium Leader is responsible for submitting program forms and required documentation and ensuring that all information and certifications submitted are true and correct. The Consortium Leader must also collect and retain a Letter of Agency (LOA) from each member, pursuant to § 54.632.

(4) *Competitive bidding and cost allocation.* The Consortium Leader is responsible for ensuring that the competitive bidding process is fair and open and otherwise complies with Commission requirements. If costs are shared by both eligible and ineligible entities, the Consortium Leader must ensure that costs are allocated in a manner that ensures that only eligible entities receive the benefit of program discounts.

(5) *Invoicing.* The Consortium Leader is responsible for notifying the Administrator when supported services have commenced and for submitting invoices to the Administrator.

(6) *Recordkeeping, site visits, and audits.* The Consortium Leader is also responsible for compliance with the Commission's recordkeeping requirements and for coordinating site visits and audits for all consortium members.

■ 20. Add § 54.632 to subpart G to read as follows:

**§ 54.632 Letters of agency (LOA).**

(a) *Authorizations.* Under the Healthcare Connect Fund, the Consortium Leader must obtain the following authorizations.

(1) Prior to the submission of the request for services, the Consortium Leader must obtain authorization, the necessary certifications, and any supporting documentation from each consortium member to permit the Consortium Leader to submit the request for services and prepare and post the request for proposal on behalf of the member.

(2) Prior to the submission of the funding request, the Consortium Leader must secure authorization, the necessary certifications, and any supporting documentation from each consortium member to permit the Consortium Leader to submit the funding request and manage invoicing and payments on behalf of the member.

(b) *Optional two-step process.* The Consortium Leader may secure both required authorizations from each consortium member in either a single LOA or in two separate LOAs.

(c) *Required Information in LOA.* (1) An LOA must include, at a minimum, the name of the entity filing the application (*i.e.,* lead applicant or Consortium Leader); name of the entity authorizing the filing of the application (*i.e.,* the participating health care provider/consortium member); the physical location of the health care provider/consortium member site(s); the relationship of each site seeking support to the lead entity filing the application; the specific timeframe the LOA covers; the signature, title and contact information (including phone number, mailing address, and email address) of an official who is authorized to act on behalf of the health care provider/consortium member; signature date; and the type of services covered by the LOA.

(2) For HCPs located on Tribal lands, if the health care facility is a contract facility that is run solely by the tribe, the appropriate tribal leader, such as the tribal chairperson, president, or governor, shall also sign the LOA, unless the health care responsibilities have been duly delegated to another tribal government representative.

■ 21. Add § 54.633 to subpart G to read as follows:

**§ 54.633 Health care provider contribution.**

(a) *Health care provider contribution.* All health care providers receiving support under the Healthcare Connect Fund shall receive a 65 percent discount on the cost of eligible expenses and shall be required to contribute 35 percent of the total cost of all eligible expenses.

(b) *Limits on eligible sources of health care provider contribution.* Only funds from eligible sources may be applied toward the health care provider's required contribution.

(1) Eligible sources include the applicant or eligible health care provider participants; state grants, funding, or appropriations; federal funding, grants, loans, or appropriations except for other federal universal service funding; Tribal government funding; and other grant funding, including private grants.

(2) Ineligible sources include (but are not limited to) in-kind or implied contributions from health care providers; direct payments from vendors or other service providers, including contractors and consultants to such entities; and for-profit entities.

(c) *Disclosure of health care provider contribution source.* Prior to receiving support, applicants are required to identify with specificity their sources of funding for their contribution of eligible expenses.

(d) *Future revenues from excess capacity as source of health care provider contribution.* A consortium applicant that receives support for participant-owned network facilities under § 54.636 may use future revenues from excess capacity as a source for the required health care provider contribution, subject to the following limitations.

(1) The consortium's selection criteria and evaluation for ''cost-effectiveness'' pursuant to § 54.642 cannot provide a preference to bidders that offer to construct excess capacity.

(2) The applicant must pay the full amount of the additional costs for excess capacity facilities that will not be part of the supported health care network.

(3) The additional cost of constructing excess capacity facilities may not count toward a health care provider's required contribution.

(4) The inclusion of excess capacity facilities cannot increase the funded cost of the dedicated health care network in any way.

(5) An eligible health care provider (typically the consortium, although it may be an individual health care provider participating in the consortium) must retain ownership of the excess capacity facilities. It may make the facilities available to third parties only under an indefeasible right of use (IRU) or lease arrangement. The lease or IRU between the participant and the third party must be an arm's length transaction. To ensure that this is an arm's length transaction, neither the vendor that installs the excess capacity facilities nor its affiliate is eligible to enter into an IRU or lease with the participant.

(6) Any amount prepaid for use of the excess capacity facilities (IRU or lease) must be placed in an escrow account. The participant can then use the escrow account as an eligible source of funds for the participant's 35 percent contribution to the project.

(7) All revenues from use of the excess capacity facilities by the third party must be used for the health care provider contribution or for sustainability of the health care network supported by the Healthcare Connect Fund. Network costs that may be funded with any additional revenues that remain include administration, equipment, software, legal fees, or other costs not covered by the Healthcare Connect Fund, as long as they are relevant to sustaining the network.

■ 22. Add § 54.634 to subpart G to read as follows:

**§ 54.634 Eligible services.**

(a) *Eligible services.* Subject to the provisions of §§ 54.600 through 54.602 and §§ 54.630 through 54.680, eligible health care providers may request support from the Healthcare Connect Fund for any advanced telecommunications or information service that enables health care providers to post their own data, interact with stored data, generate new data, or communicate, by providing connectivity over private dedicated networks or the public Internet for the provision of health information technology.

(b) *Eligibility of dark fiber.* A consortium of eligible health care providers may receive support for ''dark'' fiber where the customer, not the vendor, provides the modulating electronics, subject to the following limitations:

(1) Support for recurring charges associated with dark fiber is only available once the dark fiber is ''lit'' and actually being used by the health care provider. Support for non-recurring charges for dark fiber is only available for fiber lit within the same funding year, but applicants may receive up to a one-year extension to light fiber if they provide documentation to the Administrator that construction was unavoidably delayed due to weather or other reasons.

(2) Requests for proposals (RFPs) that solicit dark fiber solutions must also solicit proposals to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or indefeasible right of use.

(3) If an applicant intends to request support for equipment and maintenance costs associated with lighting and operating dark fiber, it must include such elements in the same RFP as the dark fiber so that the Administrator can review all costs associated with the fiber when determining whether the applicant chose the most cost-effective bid.

(c) *Dark and lit fiber maintenance costs.* (1) Both individual and consortium applicants may receive support for recurring maintenance costs associated with leases of dark or lit fiber.

(2) Consortium applicants may receive support for upfront payments for maintenance costs associated with leases of dark or lit fiber, subject to the limitations in § 54.638.

(d) *Reasonable and customary installation charges.* Eligible health care providers may obtain support for reasonable and customary installation charges for eligible services, up to an undiscounted cost of $5,000 per eligible site.

(e) *Upfront charges for vendor deployment of new or upgraded facilities.* (1) Participants may obtain support for upfront charges for vendor deployment of new or upgraded facilities to serve eligible sites.

(2) Support is available to extend vendor deployment of facilities up to the ''demarcation point,'' which is the boundary between facilities owned or controlled by the vendor, and facilities owned or controlled by the customer.

■ 23. Add § 54.635 to subpart G to read as follows:

**§ 54.635 Eligible equipment.**

(a) Both individual and consortium applicants may receive support for network equipment necessary to make functional an eligible service that is supported under the Healthcare Connect Fund.

(b) Consortium applicants may also receive support for network equipment necessary to manage, control, or maintain an eligible service or a dedicated health care broadband network. Support for network equipment is not available for networks that are not dedicated to health care.

(c) Network equipment eligible for support includes the following:

(1) Equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment. This includes equipment required to light dark fiber, or equipment necessary to connect dedicated health care broadband networks or individual health care providers to middle mile or backbone networks;

(2) Computers, including servers, and related hardware (*e.g.* printers, scanners,

laptops) that are used exclusively for network management;

(3) Software used for network management, maintenance, or other network operations, and development of software that supports network management, maintenance, and other network operations;

(4) Costs of engineering, furnishing (*i.e.* as delivered from the manufacturer), and installing network equipment; and

(5) Equipment that is a necessary part of health care provider-owned network facilities.

(d) Additional limitations: Support for network equipment is limited to equipment:

(1) Purchased or leased by a Consortium Leader or eligible health care provider; and

(2) Used for health care purposes.

■ 24. Add § 54.636 to subpart G to read as follows:

**§ 54.636 Eligible participant-constructed and owned network facilities for consortium applicants.**

(a) Subject to the funding limitations under §§ 54.675 and 54.638 and the following restrictions, consortium applicants may receive support for network facilities that will be constructed and owned by the consortium (if the consortium is an eligible health care provider) or eligible health care providers within the consortium.

(1) Consortia seeking support to construct and own network facilities are required to solicit bids for both:

(i) Services provided over third-party networks; and

(ii) Construction of participant-owned network facilities, in the same request for proposals. Requests for proposals must provide sufficient detail so that cost-effectiveness can be evaluated over the useful life of the proposed network facility to be constructed.

(2) Support for participant-constructed and owned network facilities is only available where the consortium demonstrates that constructing its own network facilities is the most cost-effective option after competitive bidding, pursuant to § 54.642.

(b) [Reserved].

■ 25. Add § 54.637 to subpart G to read as follows:

**§ 54.637 Off-site data centers and off-site administrative offices.**

(a) The connections and network equipment associated with off-site data centers and off-site administrative offices used by eligible health care providers for their health care purposes are eligible for support under the Healthcare Connect Fund, subject to the conditions and restrictions set forth in paragraph (b) of this section.

(1) An ''off-site administrative office'' is a facility that does not provide hands-on delivery of patient care, but performs administrative support functions that are critical to the provision of clinical care by eligible health care providers.

(2) An ''off-site data center'' is a facility that serves as a centralized repository for the storage, management, and dissemination of an eligible health care provider's computer systems, associated components, and data, including (but not limited to) electronic health records.

(b) *Conditions and Restrictions.* The following conditions and restrictions apply to support provided under this sections.

(1) Connections eligible for support are only those that are between:

(i) Eligible health care provider sites and off-site data centers or off-site administrative offices,

(ii) Two off-site data centers,

(iii) Two off-site administrative offices,

(iv) An off-site data center and the public Internet or another network,

(v) An off-site administrative office and the public Internet or another network, or

(vi) An off-site administrative office and an off-site data center.

(2) The supported connections and network equipment must be used solely for health care purposes.

(3) The supported connections and network equipment must be purchased by an eligible health care provider or a public or non-profit health care system that owns and operates eligible health care provider sites.

(4) If traffic associated with one or more ineligible health care provider sites is carried by the supported connection and/or network equipment, the ineligible health care provider sites must allocate the cost of that connection and/or equipment between eligible and ineligible sites, consistent with the ''fair share'' principles set forth in § 54.639(d).

■ 26. Add § 54.638 to subpart G to read as follows:

**§ 54.638 Upfront payments.**

(a) Upfront payments include all non-recurring costs for services, equipment, or facilities, other than reasonable and customary installation charges of up to $5,000.

(b) The following limitations apply to all upfront payments:

(1) Upfront payments associated with services providing a bandwidth of less than 1.5 Mbps (symmetrical) are not eligible for support.

(2) Only consortium applicants are eligible for support for upfront payments.

(c) The following limitations apply if a consortium makes a request for support for upfront payments that exceeds, on average, $50,000 per eligible site in the consortium:

(1) The support for the upfront payments must be prorated over at least three years.

(2) The upfront payments must be part of a multi-year contract.

■ 27. Add § 54.639 to subpart G to read as follows:

**§ 54.639 Ineligible expenses.**

*(a) Equipment or services not directly associated with eligible services.* Expenses associated with equipment or services that are not necessary to make an eligible service functional, or to manage, control, or maintain an eligible service or a dedicated health care broadband network are ineligible for support.

**Note to Paragraph (a):** The following are examples of ineligible expenses:

1. Costs associated with general computing, software, applications, and Internet content development are not supported, including the following:

i. Computers, including servers, and related hardware (*e.g.,* printers, scanners, laptops), unless used exclusively for network management, maintenance, or other network operations;

ii. End user wireless devices, such as smartphones and tablets;

iii. Software, unless used for network management, maintenance, or other network operations;

iv. Software development (excluding development of software that supports network management, maintenance, and other network operations);

v. Helpdesk equipment and related software, or services, unless used exclusively in support of eligible services or equipment;

vi. Web server hosting;

vii. Web site portal development;

viii. Video/audio/web conferencing equipment or services; and

ix. Continuous power source.

2. Costs associated with medical equipment (hardware and software), and other general health care provider expenses are not supported, including the following:

i. Clinical or medical equipment;

ii. Telemedicine equipment, applications, and software;

iii. Training for use of telemedicine equipment;

iv. Electronic medical records systems; and

v. Electronic records management and expenses.

*(b) Inside wiring/internal connections.* Expenses associated with inside wiring or internal connections are ineligible for support under the Healthcare Connect Fund.

*(c) Administrative expenses.* Administrative expenses are not eligible for support under the Healthcare Connect Fund.

**Note to Paragraph (c):** Ineligible administrative expenses include, but not limited to, the following expenses:

1. Personnel costs (including salaries and fringe benefits), except for personnel expenses in a consortium application that directly relate to designing, engineering, installing, constructing, and managing a dedicated broadband network. Ineligible costs of this category include, for example, personnel to perform program management and coordination, program administration, and marketing;

2. Travel costs, except for travel costs that are reasonable and necessary for network design or deployment and that are specifically identified and justified as part of a competitive bid for a construction project;

3. Legal costs;

4. Training, except for basic training or instruction directly related to and required for broadband network installation and associated network operations;

5. Program administration or technical coordination (*e.g.,* preparing application materials, obtaining letters of agency, preparing request for proposals, negotiating with vendors, reviewing bids, and working with the Administrator) that involves anything other than the design, engineering, operations, installation, or construction of the network;

6. Administration and marketing costs (*e.g.,* administrative costs; supplies and materials, except as part of network installation/construction; marketing studies, marketing activities, or outreach to potential network members; evaluation and feedback studies);

7. Billing expenses (*e.g.,* expense that vendors may charge for allocating costs to each health care provider in a network);

8. Helpdesk expenses (*e.g.,* equipment and related software, or services); and

9. Technical support services that provide more than basic maintenance.

*(d) Cost allocation for ineligible sites, services, or equipment. (1) Ineligible sites.* Eligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of the expenses. An applicant may seek support for only the portion of a shared eligible expense attributable to eligible health care provider sites. To receive support, the applicant must ensure that ineligible sites pay their fair share of the expense. The fair share is determined as follows:

(i) If the vendor charges a separate and independent price for each site, an ineligible site must pay the full undiscounted price.

(ii) If there is no separate and independent price for each site, the applicant must prorate the undiscounted price for the ''shared'' service, equipment, or facility between eligible and ineligible sites on a proportional fully-distributed basis. Applicants must make this cost allocation using a method that is based on objective criteria and reasonably reflects the eligible usage of the shared service, equipment, or facility. The applicant bears the burden of demonstrating the reasonableness of the allocation method chosen.

(2) *Ineligible components of a single service or piece of equipment.* Applicants seeking support for a service or piece of equipment that includes an ineligible component must explicitly request in their requests for proposals that vendors include pricing for a comparable service or piece of equipment that is comprised of only eligible components. If the selected provider also submits a price for the eligible component on a stand-alone basis, the support amount is calculated based on the stand-alone price of the eligible component on a stand-alone basis. If the vendor does not offer the eligible component on a stand-alone basis, the full price of the entire service or piece of equipment must be taken into account, without regard to the value of the ineligible components, when determining the most cost-effective bid.

(3) *Written description.* Applicants must submit a written description of their allocation method(s) to the Administrator with their funding requests.

(4) *Written agreement.* If ineligible entities participate in a network, the allocation method must be memorialized in writing, such as a formal agreement among network members, a master services contract, or for smaller consortia, a letter signed and dated by all (or each) ineligible entity and the Consortium Leader.

■ 28. Add § 54.640 to subpart G to read as follows:

**§ 54.640 Eligible vendors.**

(a) *Eligibility.* For purposes of the Healthcare Connect Fund, eligible vendors shall include any provider of equipment, facilities, or services that are eligible for support under Healthcare Connect Fund.

(b) *Obligation to assist health care providers.* Vendors in the Healthcare Connect Fund must certify, as a condition of receiving support, that they will provide to health care providers, on a timely basis, all information and documents regarding supported equipment, facilities, or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries. The Administrator may withhold disbursements for the vendor if the vendor, after written notice from the Administrator, fails to comply with this requirement.

■ 29. Add § 54.642 to subpart G to read as follows:

**§ 54.642 Competitive bidding requirement and exemptions.**

(a) *Competitive bidding requirement.* All applicants are required to engage in a competitive bidding process for supported services, facilities, or equipment consistent with the requirements set forth in this subpart, unless they qualify for one or more of the exemptions in paragraph (h) of this section. In addition, applicants may engage in competitive bidding even if they qualify for an exemption. Applicants who utilize a competitive bidding exemption may proceed directly to filing a funding request as described in § 54.643.

(b) *Fair and open process.* (1) All entities participating in the Healthcare Connect Fund must conduct a fair and open competitive bidding process, consistent with all applicable requirements.

(2) Vendors who intend to bid to provide supported services, equipment, or facilities to a health care provider may not simultaneously help the health care provider choose a winning bid. Any vendor who submits a bid, and any individual or entity that has a financial interest in such a vendor, is prohibited from:

(i) Preparing, signing or submitting an applicant's request for services;

(ii) Serving as the Consortium Leader or other point of contact on behalf of applicant(s);

(iii) Being involved in setting bid evaluation criteria; or

(iv) Participating in the bid evaluation or vendor selection process (except in their role as potential vendors).

(3) All potential bidders must have access to the same information and must be treated in the same manner.

(4) All applicants and vendors must comply with any applicable state, Tribal, or local competitive bidding requirements. The competitive bidding requirements in this section apply in addition to state, Tribal, and local competitive bidding requirements and are not intended to preempt such state, Tribal, or local requirements.

(c) *Cost-effective.* For purposes of the Healthcare Connect Fund, ''cost-effective'' is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to

choosing a method of providing the required health care services.

(d) *Bid evaluation criteria.* Applicants must develop weighted evaluation criteria (*e.g.,* scoring matrix) that demonstrate how the applicant will choose the most ''cost-effective'' bid before submitting a Request for Services. Price must be a primary factor, but need not be the only primary factor. A non-price factor can receive an equal weight to price, but may not receive a greater weight than price.

(e) *Request for services.* Applicants must submit the following documents to the Administrator in order to initiate competitive bidding.

(1) *Form 461, including certifications.* The applicant must provide the following certifications as part of the request for services.

(i) The person signing the application is authorized to submit the application on behalf of the applicant and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained therein are true.

(ii) The applicant has followed any applicable state, Tribal, or local procurement rules.

(iii) All Healthcare Connect Fund support will be used solely for purposes reasonably related to the provision of health care service or instruction that the HCP is legally authorized to provide under the law of the state in which the services are provided and will not be sold, resold, or transferred in consideration for money or any other thing of value.

(iv) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules.

(v) The applicant has reviewed all applicable requirements for the program and will comply with those requirements.

(2) *Bid evaluation criteria.* Requirements for bid evaluation criteria are described in paragraph (d) of this section.

(3) *Declaration of assistance.* All applicants must submit a ''Declaration of Assistance'' with their Request for Services. In the Declaration of Assistance, applicants must identify each and every consultant, vendor, and other outside expert, whether paid or unpaid, who aided in the preparation of their applications.

(4) *Request for proposal (if applicable).* (i) Any applicant may use a request for proposals (RFP). Applicants who use an RFP must submit the RFP and any additional relevant bidding information to the Administrator with Form 461.

(ii) An applicant must submit an RFP:

(A) If it is required to issue an RFP under applicable State, Tribal, or local procurement rules or regulations;

(B) If the applicant is a consortium seeking more than $100,000 in program support during the funding year, including applications that seek more than $100,000 in program support for a multi-year commitment; or

(C) If the applicant is a consortium seeking support for participant-constructed and owned network facilities.

*(iii) RFP requirements.* (A) An RFP must provide sufficient information to enable an effective competitive bidding process, including describing the health care provider's service needs and defining the scope of the project and network costs (if applicable).

(B) An RFP must specify the period during which bids will be accepted.

(C) An RFP must include the bid evaluation criteria described in paragraph (d) of this section, and solicit sufficient information so that the criteria can be applied effectively.

(D) Consortium applicants seeking support for long-term capital investments whose useful life extends beyond the period of the funding commitment (*e.g.,* facilities constructed and owned by the applicant, fiber indefeasible rights of use) must seek bids in the same RFP from vendors who propose to meet those needs via services provided over vendor-owned facilities, for a time period comparable to the life of the proposed capital investment.

(E) Applicants may prepare RFPs in any manner that complies with the rules in this subpart and any applicable state, Tribal, or local procurement rules or regulations.

(5) *Additional requirements for consortium applicants. (i) Network plan.* Consortium applicants must submit a narrative describing specific elements of their network plan with their Request for Services. Consortia applicants are required to use program support for the purposes described in their narrative. The required elements of the narrative include:

(A) Goals and objectives of the network;

(B) Strategy for aggregating the specific needs of health care providers (including providers that serve rural areas) within a state or region;

(C) Strategy for leveraging existing technology to adopt the most efficient and cost effective means of connecting those providers;

(D) How the supported network will be used to improve or provide health care delivery;

(E) Any previous experience in developing and managing health information technology (including telemedicine) programs; and

(F) A project management plan outlining the project's leadership and management structure, and a work plan, schedule, and budget.

(ii) *Letters of agency.* Consortium applicants must submit letters of agency pursuant to § 54.632.

(f) *Public posting by the Administrator.* The Administrator shall post on its web site the following competitive bidding documents, as applicable:

(1) Form 461,

(2) Bid evaluation criteria,

(3) Request for proposal, and

(4) Network plan.

(g) *28-day waiting period.* After posting the documents described in paragraph (f) of this section on its Web site, the Administrator shall send confirmation of the posting to the applicant. The applicant shall wait at least 28 days from the date on which its competitive bidding documents are posted on the Web site before selecting and committing to a vendor.

(1) *Selection of the most ''cost-effective'' bid and contract negotiation.* Each applicant subject to competitive bidding is required to certify to the Administrator that the selected bid is, to the best of the applicant's knowledge, the most cost-effective option available. Applicants are required to submit the documentation listed in § 54.643 to support their certifications.

(2) Applicants who plan to request evergreen status under § 54.642(h)(4)(ii) must enter into a contract that identifies both parties, is signed and dated by the health care provider or Consortium Leader after the 28-day waiting period expires, and specifies the type, term, and cost of service.

(h) *Exemptions to competitive bidding requirements. (1) Annual undiscounted cost of $10,000 or less.* An applicant that seeks support for $10,000 or less of total undiscounted eligible expenses for a single year is exempt from the competitive bidding requirements under this section, if the term of the contract is one year or less.

*(2) Government Master Service Agreement (MSA).* Eligible health care providers that seek support for services and equipment purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements, are exempt from the competitive bidding requirements under this section.

*(3) Master Service Agreements approved under the Pilot Program or*

*Healthcare Connect Fund.* A eligible health care provider site may opt into an existing MSA approved under the Pilot Program or Healthcare Connect Fund and seek support for services and equipment purchased from the MSA without triggering the competitive bidding requirements under this section, if the MSA was developed and negotiated in response to an RFP that specifically solicited proposals that included a mechanism for adding additional sites to the MSA.

*(4) Evergreen contracts.* (i) Subject to the provisions in § 54.644, the Administrator may designate a multi-year contract as ''evergreen,'' which means that the service(s) covered by the contract need not be re-bid during the contract term.

(ii) A contract entered into by a health care provider or consortium as a result of competitive bidding may be designated as evergreen if it meets all of the following requirements:

(A) Is signed by the individual health care provider or consortium lead entity;

(B) Specifies the service type, bandwidth and quantity;

(C) Specifies the term of the contract;

(D) Specifies the cost of services to be provided; and

(E) Includes the physical location or other identifying information of the health care provider sites purchasing from the contract.

(iii) Participants may exercise voluntary options to extend an evergreen contract without undergoing additional competitive bidding, if:

(A) The voluntary extension(s) is memorialized in the evergreen contract;

(B) The decision to extend the contract occurs before the participant files its funding request for the funding year when the contract would otherwise expire; and

(C) The voluntary extension(s) do not exceed five years in the aggregate.

*(5) Schools and libraries program master contracts.* Subject to the provisions in §§ 54.500(g), 54.501(c)(1), and 54.503, an eligible health care provider in a consortium with participants in the schools and libraries universal service support program and a party to the consortium's existing contract is exempt from the Healthcare Connect Fund competitive bidding requirements if the contract was approved in the schools and libraries universal service support program as a master contract. The health care provider must comply with all Healthcare Connect Fund rules and procedures except for those applicable to competitive bidding.

■ 30. Add § 54.643 to subpart G to read as follows:

**§ 54.643 Funding commitments.**

(a) Once a vendor is selected, applicants must submit a ''Funding Request'' (and supporting documentation) to provide information about the services, equipment, or facilities selected and certify that the services selected were the most cost-effective option of the offers received. The following information should be submitted to the Administrator with the Funding Request.

(1) *Request for funding.* The applicant shall submit a request for funding (Form 462) to identify the service(s), equipment, or facilities; rates; vendor(s); and date(s) of vendor selection.

(2) *Certifications.* The applicant must provide the following certifications as part of the request for funding:

(i) The person signing the application is authorized to submit the application on behalf of the applicant and has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained therein are true.

(ii) Each vendor selected is, to the best of the applicant's knowledge, information and belief, the most cost-effective vendor available, as defined in § 54.642(c).

(iii) All Healthcare Connect Fund support will be used only for eligible health care purposes.

(iv) The applicant is not requesting support for the same service from both the Telecommunications Program and the Healthcare Connect Fund.

(v) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules, and understands that any letter from the Administrator that erroneously commits funds for the benefit of the applicant may be subject to rescission.

(vi) The applicant has reviewed all applicable requirements for the program and will comply with those requirements.

(vii) The applicant will maintain complete billing records for the service for five years.

(3) *Contracts or other documentation.* All applicants must submit a contract or other documentation that clearly identifies the vendor(s) selected and the health care provider(s) who will receive the services, equipment, or facilities; the service, bandwidth, and costs for which support is being requested; and the term of the service agreement(s) if applicable (*i.e.,* if services are not being provided on a month-to-month basis). For services, equipment, or facilities provided under contract, the applicant must submit a copy of the contract signed and dated (after the Allowable Contract Selection Date) by the individual health care provider or Consortium Leader. If the service, equipment, or facilities are not being provided under contract, the applicant must submit a bill, service offer, letter, or similar document from the vendor that provides the required information.

(4) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have selected the most cost-effective option, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and the following documents (as applicable): bid evaluation sheets; a list of people who evaluated bids (along with their title/role/relationship to the applicant organization); memos, board minutes, or similar documents related to the vendor selection/award; copies of notices to winners; and any correspondence with vendors during the bidding/evaluation/award phase of the process. Applicants who claim a competitive bidding exemption must submit relevant documentation to allow the Administrator to verify that the applicant is eligible for the claimed exemption.

(5) *Cost allocation for ineligible entities or components.* Pursuant to § 54.639(d)(3) through (d)(4), where applicable, applicants must submit a description of how costs will be allocated for ineligible entities or components, as well as any agreements that memorialize such arrangements with ineligible entities.

(6) *Additional documentation for consortium applicants.* A consortium applicant must also submit the following:

(i) Any revisions to the network plan submitted with the Request for Services pursuant to § 54.642(e)(5)(i), as necessary. If not previously submitted, the consortium should provide a narrative description of how the network will be managed, including all administrative aspects of the network, including but not limited to invoicing, contractual matters, and network operations. If the consortium is required to provide a sustainability plan as set forth in § 54.643(a)(6)(iv), the revised budget should include the budgetary factors discussed in the sustainability plan requirements.

(ii) A list of participating health care providers and all of their relevant information, including eligible (and ineligible, if applicable) cost information for each participating health care provider.

(iii) Evidence of a viable source for the undiscounted portion of supported costs.

(iv) Sustainability plans for applicants requesting support for long-term capital expenses: Consortia that seek funding to construct and own their own facilities or obtain indefeasible right of use or capital lease interests are required to submit a sustainability plan with their funding requests demonstrating how they intend to maintain and operate the facilities that are supported over the relevant time period. Applicants may incorporate by reference other portions of their applications (*e.g.,* project management plan, budget). The sustainability plan must, at a minimum, address the following points:

(A) *Projected sustainability period.* Indicate the sustainability period, which at a minimum is equal to the useful life of the funded facility. The consortium's budget must show projected income and expenses (*i.e.,* for maintenance) for the project at the aggregate level, for the sustainability period.

(B) *Principal factors.* Discuss each of the principal factors that were considered by the participant to demonstrate sustainability. This discussion must include all factors that show that the proposed network will be sustainable for the entire sustainability period. Any factor that will have a monetary impact on the network must be reflected in the applicant's budget.

(C) *Terms of membership in the network.* Describe generally any agreements made (or to be entered into) by network members (*e.g.,* participation agreements, memoranda of understanding, usage agreements, or other similar agreements). The sustainability plan must also describe, as applicable:

(*1*) Financial and time commitments made by proposed members of the network;

(*2*) If the project includes excess bandwidth for growth of the network, describe how such excess bandwidth will be financed; and

(*3*) If the network will include ineligible health care providers and other network members, describe how fees for joining and using the network will be assessed.

(D) *Ownership structure.* Explain who will own each material element of the network (*e.g.,* fiber constructed, network equipment, end user equipment). For purposes of this subsection, ''ownership'' includes an indefeasible right of use interest. Applicants must clearly identify the legal entity that will own each material element. Applicants must also describe any arrangements made to ensure continued use of such elements by the network members for the duration of the sustainability period.

(E) *Sources of future support.* Describe other sources of future funding, including fees to be paid by eligible health care providers and/or non-eligible entities.

(F) *Management.* Describe the management structure of the network for the duration of the sustainability period. The applicant's budget must describe how management costs will be funded.

(v) *Material change to sustainability plan.* A consortium that is required to file a sustainability plan must maintain its accuracy. If there is a material change to a required sustainability plan that would impact projected income or expenses by more than 20 percent or $100,000 from the previous submission, or if the applicant submits a funding request based on a new Form 462 (*i.e.,* a new competitively bid contract), the consortium is required to re-file its sustainability plan. In the event of a material change, the applicant must provide the Administrator with the revised sustainability plan no later than the end of the relevant quarter, clearly showing (*i.e.,* by redlining or highlighting) what has changed.

(b) [Reserved]

■ 31. Add § 54.644 to subpart G to read as follows:

**§ 54.644 Multi-year commitments.**

(a) Participants in the Healthcare Connect Fund are permitted to enter into multi-year contracts for eligible expenses and may receive funding commitments from the Administrator for a period that covers up to three funding years.

(b) If a long-term contract covers a period of more than three years, the applicant may also have the contract designated as ''evergreen'' under § 54.642(h)(4) which will allow the applicant to re-apply for a funding commitment under the contract after three years without having to undergo additional competitive bidding.

■ 32. Add § 54.645 to subpart G to read as follows:

**§ 54.645 Payment process.**

(a) The Consortium Leader (or health care provider, if participating individually) must certify to the Administrator that it has paid its contribution to the vendor before the invoice can be sent to Administrator and the vendor can be paid.

(b) Before the Administrator may process and pay an invoice, both the Consortium Leader (or health care provider, if participating individually) and the vendor must certify that they have reviewed the document and that it is accurate. All invoices must be received by the Administrator within six months of the end date of the funding commitment.

■ 33. Add § 54.646 to subpart G to read as follows:

**§ 54.646 Site and service substitutions.**

(a) A Consortium Leader (or health care provider, if participating individually) may request a site or service substitution if:

(1) The substitution is provided for in the contract, within the change clause, or constitutes a minor modification;

(2) The site is an eligible health care provider and the service is an eligible service under the Healthcare Connect Fund;

(3) The substitution does not violate any contract provision or state, Tribal, or local procurement laws; and

(4) The requested change is within the scope of the controlling request for services, including any applicable request for proposal used in the competitive bidding process.

(b) Support for a qualifying site and service substitution will be provided to the extent the substitution does not cause the total amount of support under the applicable funding commitment to increase.

■ 34. Add § 54.647 to subpart G to read as follows:

**§ 54.647 Data collection and reporting.**

(a) Each consortium lead entity must file an annual report with the Administrator on or before September 30 for the preceding funding year, with the information and in the form specified by the Wireline Competition Bureau.

(b) Each consortium is required to file an annual report for each funding year in which it receives support from the Healthcare Connect Fund.

(c) For consortia that receive large upfront payments, the reporting requirement extends for the life of the supported facility.

■ 35. Add § 54.648 to subpart G to read as follows:

**§ 54.648 Audits and recordkeeping.**

(a) *Random audits.* Participants shall be subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) *Recordkeeping.* (1) Participants, including Consortium Leaders and health care providers, shall maintain records to document compliance with program rules and orders for at least 5 years after the last day of service delivered in a particular funding year. Participants who receive support for long-term capital investments in

facilities whose useful life extends beyond the period of the funding commitment shall maintain records for at least 5 years after the end of the useful life of the facility. Participants shall maintain asset and inventory records of supported network equipment to verify the actual location of such equipment for a period of 5 years after purchase.

(2) Vendors shall retain records related to the delivery of supported services, facilities, or equipment to document compliance with program rules and orders for at least 5 years after the last day of the delivery of supported services, equipment, or facilities in a particular funding year.

(3) Both participants and vendors shall produce such records at the request of the Commission, any auditor appointed by the Administrator or the Commission, or of any other state or federal agency with jurisdiction.

■ 36. Add § 54.649 to subpart G to read as follows:

**§ 54.649 Certifications.**

For individual health care provider applicants, required certifications must be provided and signed by an officer or director of the health care provider, or other authorized employee of the health care provider. For consortium applicants, an officer, director, or other authorized employee of the Consortium Leader must sign the required certifications. Pursuant to § 54.680, electronic signatures are permitted for all required certifications.

■ 37. Add § 54.671 to subpart G and an undesignated center heading to read as follows:

**General Provisions**

**§ 54.671 Resale.**

(a) *Prohibition on resale.* Services purchased pursuant to universal service support mechanisms under this subpart shall not be sold, resold, or transferred in consideration for money or any other thing of value.

(b) *Permissible fees.* The prohibition on resale set forth in paragraph (a) of this section shall not prohibit a health care provider from charging normal fees for health care services, including instruction related to services purchased with support provided under this subpart.

■ 38. Add § 54.672 to subpart G to read as follows:

**§ 54.672 Duplicate support.**

(a) Eligible health care providers that seek support under the Healthcare Connect Fund for telecommunications services may not also request support from the Telecommunications Program for the same services.

(b) Eligible health care providers that seek support under the Telecommunications Program or the Healthcare Connect Fund may not also request support from any other universal service program for the same expenses.

■ 39. Add § 54.675 to subpart G to read as follows:

**§ 54.675 Cap.**

(a) *Amount of the annual cap.* The aggregate annual cap on federal universal service support for health care providers shall be $400 million per funding year, of which up to $150 million per funding year will be available to support upfront payments and multi-year commitments under the Healthcare Connect Fund.

(b) *Funding year.* A funding year for purposes of the health care providers cap shall be the period July 1 through June 30.

(c) *Requests.* Funds shall be available as follows:

(1) Generally, funds shall be available to eligible health care providers on a first-come-first-served basis, with requests accepted beginning on the first of January prior to each funding year.

(2) For the Telecommunications Program and the Healthcare Connect Fund, the Administrator shall implement a filing window period that treats all eligible health care providers filing within the window period as if their applications were simultaneously received.

(3) [Reserved]

(4) The deadline to submit a funding commitment request under the Telecommunications Program and the Healthcare Connect Fund is June 30 for the funding year that begins on the previous July 1.

(d) *Annual filing requirement.* Health care providers shall file new funding requests for each funding year, except for health care providers who have received a multi-year funding commitment under § 54.644.

(e) *Long-term contracts.* If health care providers enter into long-term contracts for eligible services, the Administrator shall only commit funds to cover the portion of such a long-term contract scheduled to be delivered during the funding year for which universal service support is sought, except for multi-year funding commitments as described in § 54.644.

(f) *Pro-rata reductions for Telecommunications Program support.* The Administrator shall act in accordance with this section when a filing window period for the Telecommunications Program and the Healthcare Connect Fund, as described in paragraph (c)(2) of this section, is in effect. When a filing window period described in paragraph (c)(2) of this section closes, the Administrator shall calculate the total demand for Telecommunications Program and Healthcare Connect Fund support submitted by all applicants during the filing window period. If the total demand during a filing window period exceeds the total remaining support available for the funding year, the Administrator shall take the following steps:

(1) The Administrator shall divide the total remaining funds available for the funding year by the total amount of Telecommunications Program and Healthcare Connect Fund support requested by each applicant that has filed during the window period, to produce a pro-rata factor.

(2) The Administrator shall calculate the amount of Telecommunications Program and Healthcare Connect Fund support requested by each applicant that has filed during the filing window.

(3) The Administrator shall multiply the pro-rata factor by the total dollar amount requested by each applicant filing during the window period. Administrator shall then commit funds to each applicant for Telecommunications Program and Healthcare Connect Fund support consistent with this calculation.

■ 40. Add § 54.679 to subpart G to read as follows:

**§ 54.679 Election to offset support against annual universal service fund contribution.**

(a) A service provider that contributes to the universal service support mechanisms under subpart H of this part and also provides services eligible for support under this subpart to eligible health care providers may, at the election of the contributor:

(1) Treat the amount eligible for support under this subpart as an offset against the contributor's universal service support obligation for the year in which the costs for providing eligible services were incurred; or

(2) Receive direct reimbursement from the Administrator for that amount.

(b) Service providers that are contributors shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a service provider that fails to remit its monthly universal service contribution obligation, however, shall first be applied as an offset to that contributor's contribution

obligation. Such a service provider shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit its monthly universal service obligation. A service provider that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(c) If a service provider providing services eligible for support under this subpart elects to treat that support amount as an offset against its universal service contribution obligation and the total amount of support owed exceeds its universal service obligation, calculated on an annual basis, the service provider shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a service provider shall be provided by the Administrator no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the contributor's universal service obligation was applied.

■ 41. Add § 54.680 to subpart G to read as follows:

**§ 54.680 Validity of electronic signatures.**

(a) For the purposes of this subpart, an electronic signature (defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record) has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record (defined by the Electronic Signatures in Global and National Commerce Act, as a contract or other record created, generated, sent, communicated, received, or stored by electronic means) constitutes a record.

[FR Doc. 2013–04040 Filed 2–28–13; 8:45 am]

BILLING CODE 6712–01–P


# FEDERAL REGISTER

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Part III

## The President

Memorandum of February 20, 2013—Delegation of Authority To Submit to the Congress Certain Certifications, Reports, and Notifications

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# Presidential Documents

**Title 3—**

## The President

**Memorandum of February 20, 2013**

## Delegation of Authority To Submit to the Congress Certain Certifications, Reports, and Notifications

**Memorandum for the Secretary of State**

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby delegate to you:

(1) the function of the President to make all certifications, reports, and notifications to the Congress prior to entry into force of the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, as well as to provide annual reports thereafter, consistent with section 2 of the Senate Resolution of Advice and Consent to Ratification of the Treaty, dated September 29, 2010; and

(2) the responsibility of the President, under the Defense Trade Cooperation Treaties Implementation Act of 2010 (the ''Act''), to provide congressional notification of amendments to the implementing arrangements that are made pursuant to section 105(c) of the Act.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
*Washington, February 20, 2013.*

[FR Doc. 2013–04975
Filed 2–28–13; 11:15 am]
Billing code 4710–10

# Reader Aids

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**H.R. 325/P.L. 113–3**

No Budget, No Pay Act of 2013 (Feb. 4, 2013; 127 Stat. 51)

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